MESSAGE

COPIES OF CORRESPONDENCE

RELATING TO

KING'S COLLEGE UNIVERSITY

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Appendix (D. D.) 7th May.

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MESSAGE

FROM

HIS EXCELLENCY THE GOVERNOR GENERAL,

TRANSMITTING

COPIES OF CORRESPONDENCE

RELATING TO

KING'S COLLEGE UNIVERSITY.

CATHCART.

The Governor General transmits for the information of the Legislative Assembly, the Correspondence relating to King's College University, referred to in their Address of the 21st ultimo.

The Governor General informs the Legislative Assembly, that he is not aware of any charge or charges having been preferred to the Chancellor of the University against any of the Members of the College Council by other parties, beyond that contained in the Documents transmitted herewith.

Government House,
7th May, 1846.

Schedule of Papers accompanying Governor General's Message of 7th May, 1846.

1.—Memorial of the Reverend C. Winstanley.

2.—Private Secretary to Registrar of King's College, 20th May, 1845.

3.—Report of Committee of College Council on the case of the Reverend C. Winstanley (with Appendix.)

4.—Private Secretary to Reverend C. Winstanley.

5.—Private Secretary to the President of King's College.

6.—Private Secretary to the Principals of Queen's College, Victoria College and College of Regiopolis.

7.—Statement of the Council of King's College (with two enclosures).

8.—Statement of the Trustees of Queen's College (with one enclosure).

9.—Letter from Principal of Victoria College.

10.—Letter from the Very Reverend Angus McDonell, College of Regiopolis.

Appendix (D. D.) 7th May.

No. 1.—Memorial of the Rev. C. Winstanley.

(Copy.)

To the Right Honorable Charles Theophilus, Baron Metcalfe, Chancellor of the University of of King's College, &c. &c. &c.

The Memorial of the Rev. Charles Winstanley of the City of Toronto.

May it please Your Excellency,

Your Memorialist feels himself very reluctantly compelled to place before Your Excellency, as Chancellor of the University, the following statement relative to a transaction which he has recently had with the College Council, and which appears to Your Memorialist to call for Your Excellency's interference.

Your Memorialist is a Clergyman in Holy Orders of the Church of England, and came to this country in the Autumn of the year 1843.

One of the principal objects which Your Memorialist had in view in leaving England, was to invest his surplus capital in such a manner as might prove advantageous to his family. Accordingly, since Your Memorialist arrived in this country, he has made various purchases of land in the Township of Scarboro' for the purpose of agricultural improvement; and with the view of throwing his separate purchases into one property, and thereby giving unity to his agricultural operations, his investments have generally had reference more to the circumstance of the lots lying adjacent to each other than to their intrinsic value.

The first purchase which Your Excellency's Memorialist made with reference to the subject of this Memorial, was a lot of 70 acres, being the south half of lot No. 34, concession A. in the said Township of Scarboro'. The east half of lot 35, lying adjacent, was then held under lease by C. Watkins, Esquire, from the Council of King's College. The soil of the latter half is on the whole of an inferior character, but from the manner in which Your Memorialist proposed to extend his property, it became of considerable importance to him to be possessed of it, even at a price beyond its intrinsic value. Mr. Watkins himself was desirous of selling his lease, but as he had no written agreement with the College Council giving him the right of preemption, and could only assure Your Memoralist of their uniform usage in allowing to lessees the privilege of purchase at the termination of their leases, Your Memorialist did not feel disposed to treat with Mr. Watkins until he had ascertained what prospect he had of a conveyance of the fee from the College Council.

Your Memorialist accordingly, about the latter end of the spring of 1844, instructed his son, Mr. Edward Winstanley, to make the necessary inquiries at the Bursar's office, and if he found that a conveyance could be got, to enter into the requisite contract with the College Council. The result of these inquiries was, that the Council had invariably recognized the right of preemption in lessees, and that in the case of Your Memorialist there could not exist the slightest difficulty in obtaining a deed. It was at the same time intimated by Dr. Boys, the Bursar, that as the Council had not determined on the price of the lot in question, a short delay would necessarily occur till the transaction could be completed, but that as the price was always in the first instance fixed by the Council, the matter would be submitted to that body at their first meeting.

Not having heard anything further on the matter for the next three weeks, Mr. E. Winstanley again called at the Bursar's office after the lapse of that period, when Dr. Boys apologized to him for the delay that had taken place in ascertaining the decision of the Council as to the price, but he observed that Mr. Winstanley need be under no apprehension on the subject of a sale, and as there would be a meeting of the College Council very shortly, he (Dr. Boys,) would take care that the price of the lot in question should not be overlooked. On Mr. Winstanley replying that he would like to know the price as early as possible, inasmuch as he was anxious to close the transaction with Mr. Watkins, who, if any delay should occur, might, in the meantime, dispose of his interest to another party,—Dr. Boys further observed that he (Mr. Winstanley) might set his mind at rest on the subject; that he (Dr. Boys) was well acquainted with the lot in question, which he knew to be very inferior soil,—and he continued, "the minimum price of the College lands is five dollars "per acre, and in your case I should certainly say *that* "will be the maximum also."

Relying on the uniform, and hitherto invariable usage of the College Council, of giving to their lessees the privilege of preemption, and on the repeated promises made to Mr. E. Winstanley by the Bursar, and confident in the assurance that the good faith of the Council would justify the promises of its officers, Your Memorialist felt no hesitation in purchasing the interest of Mr. Watkins, for which he has actually paid the sum of £150.

For the purpose of still further enhancing the value of his property, and of adding to his own personal comfort and convenience, Your Memorialist had, for some time previous to this purchase, had it in view to erect on his property a dwelling house and offices suitable for the accommodation of himself and his family; and being desirous that his dwelling house should occupy a central position in reference to the acquisitions of surrounding land which he had made or was making, Your Memorialist, immediately on completing his contract with Mr. Watkins, commenced building at the extremity of the lot of land first referred to in this Memorial (being the south half of lot 34,) and immediately adjoining the east half of lot 35, the fee simple of which was still in the Corporation of King's College.

While Your Memorialist's operations were going on, but not until he had expended several hundred pounds in buildings and other improvements, a verbal message was left with Mr. E. Winstanley, by one of the clerks of the Bursar's Office, to the effect that the College Council had decided not to sell the lot in question. No reason was assigned for this very unlooked for proceeding; but on making further inquiries, Your Memorialist learned that the Council has suspended for a time the disposal of their lands, and that Your Memorialist's rights had been sacrificed to a new principle which had been introduced into the management. On Mr. E. Winstanley expressing his surprise to Dr. Boys that a refusal to sell should be given after a distinct promise had been made, Dr. Boys merely observed, "that the Council were very arbitrary, but that he "thought he could hold out strong hopes that the lot "would eventually be conveyed to Your Memorialist."

Fearing that the matter had not been fairly represented to the Council by the Bursar, and that he might not have informed that body of the repeated promises made to Mr. E. Winstanley, and believing that the new rule adopted by the Council could have no application to cases where distinct promises had been made, Your Memorialist instructed his son to call upon certain Members of the Council, for the purpose of placing Your Memorialist's interests in a proper light. Mr. E. Winstanley was informed that the suspension of

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sales had only existed for a week or two,—that the opposition in the Council to these sales had been got rid of by the appointment of a Sub-Committee, by whom they were now exclusively managed, and that upon application to that Committee, Your Memorialist's rights would be at once recognized. Mr. E. Winstanley accordingly made the application thus advised, to the Sub-Committee, who had now resumed the sale of lands to an extent which Your Memorialist believes shewed no diminution from the former operations of the Council. The result of the determination of the Committee was, that although they were daily making sales in cases where no promises had been made, yet as Your Memorialist's claim had already been refused by the Council, to whom it had unfortunately been referred during the short period that the sales had been suspended, it would be improper for the Committee to recognize it without the sanction of the other Members of the College Council. Mr. E. Winstanley, however, received every encouragement to pursue the claim, and certain of the Members of the Committee, among whom were Drs. Beaven and McCaul, distinctly recognized his rights and promised to support Your Memorialist's interests.

Your Memorialist's claim was accordingly again submitted to the Council, from various members of which he received the most direct assurances of its undoubted success; and, relying on these assurances, his building and agricultural operations were continued. To Your Memorialist's great astonishment, however, he received a few weeks since, not an official, but a verbal and indirect intimation, that his right to a conveyance could not be recognized by the Council.

Your Memorialist has since learned, that a sudden stop has been put to the public sale of lands, in consequence of the intervention of Your Excellency as Chancellor of the University. The object which Your Memorialist has presently in view in troubling Your Excellency is not to disturb any arrangements which Your Excellency might see fit to make for the management of the Endowment. On the contrary, Your Memorialist has been apprehensive that the College Council were disposing of a larger portion of the Endowment than the necessities of the University might require; but Your Memorialist cannot permit himself to believe that Your Excellency's Minute to the Council, by which the sales of lands were temporarily suspended, could bear application to a case where all the essentials of a contract (except that of writing) had existed for nearly twelve months anterior to the date of the Minute itself,—and where, on the faith of that contract, Your Memorialist had purchased an existing lease, and expended large sums of money on improvements from which he could reap scarcely any benefit; still less could Your Memorialist entertain such a belief when he was informed from undoubted sources, that even since the date of Your Excellency's Minute, the College Council have made sales of land to a very considerable extent in other quarters,—to an extent which has forced the conviction on Your Memorialist, that the College Council must have some reason beyond Your Memorialist's knowledge or suspicion, for selecting him as the victim upon whom a refusal to sell would fall with the most unrelenting severity.

Your Memoralist can the less hazard an explanation of the very extraordinary proceedings of the College Council, because he is on excellent terms with the majority of its members, for whom he has always entertained and expressed the most unqualified respect. And in such extraordinary circumstances Your Memorialist is willing, or rather forced to believe that an act of oppression and injustice to a stranger in this country so unprecedented as the one now detailed, could proceed from the members of the College Council only under an erroneous apprehension, and under the grossest misrepresentations, on the part of the officials in the Bursar's office, whose conduct throughout has been marked by insincerity and prevarication. Your Memorialist is prepared to establish by unexceptionable testimony the truth of the statements which he has now had the honor of submitting to Your Excellency; and he respectfully thinks that if the Council have exhibited no chariness in relaxing Your Excellency's Minute in other instances, he may with reason hope that Your Excellency's authority may be extended to place Your Memorialist beyond the influence of an order, which Your Memorialist feels confident was not intended to bear a stringent application to cases similar to his own.

Your Memorialist, therefore, humbly prays that Your Excellency will be pleased to limit the operations of Your Excellency's Minute to the College Council in such manner as to allow of a deed to issue from the Corporation in favour of Your Memorialist on his fulfilling his part of the said contract.

And Your Memorialist will ever pray, as in duty bound.

(Signed,) CHARLES WINSTANLEY,
Clerk, M. A. Oxon.

Toronto, May 13th, 1845.

No. 2. Letter from the Private Secretary to the Registrar of King's College.

Government House,
Montreal, 20th May, 1845.

Sir,

I am commanded by the Chancellor to request that the accompanying Memorial of the Reverend Charles Winstanley may be brought under the consideration of the President and Council, and that a Report thereon may be furnished for His Excellency's information.

If the case be correctly represented by the Memorialist, and the sale of the lot in question has been stopped in consequence of the Chancellor's recommendation that further sales of land should be suspended, His Lordship is of opinion that under the circumstances stated, Mr. Winstanley ought to be permitted to purchase the lot; which appears to have been the course adopted in other instances when applicants were in treaty for land previously to the Chancellor's views above referred to having been communicated to the Council. It may, however, be presumed that there are other reasons with which His Lordship has not been made acquainted, that have induced the adoption of a different course in the case of Mr. Winstanley.

I am desired by the Chancellor to take this opportunity of inquiring what progress has been made in the investigation suggested by his Minute of the 19th of March last.

I have, &c.

(Signed,) J. M. HIGGINSON.

H. Boys, Esquire,
Bursar, King's College.

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No. 3.—Report of the Committee of College Council on the case of the Reverend C. Winstanley.

The Land Committee report that they have made minute enquiry into the particulars of Mr. Winstanley's case, as detailed in his Memorial to His Excellency the Chancellor.

It appears that about the latter end of the spring of 1844, application was made verbally to the Bursar by Mr. E. Winstanley, relative to the purchase of the lot south half 38, A. Scarboro', and that when the application was submitted to the Council they declined selling it, principally on the ground that they did not wish to part with any of their property so near Toronto.

On the 14th of June Mr. Winstanley addressed a letter to the Bursar, a copy of which is annexed. (No. 1.)

This was read in Council on July 17th, and the proceedings on that occasion are recorded in the Minute of which a copy is annexed. (No. 2.) A copy of the Bursar's reply is also annexed. (No. 3.)

On February 19th, 1845, the case was entered amongst those intended for the Land Committee at their meeting held on that day. But no action was taken thereon, inasmuch as the Council had already decided that the lot in question should not be sold, and the matter had not been formally referred to the Committee by that body.

On February 26th, 1845, the case was brought under the consideration of the Council by Dr. Beaven, who read a letter from Mr. E. Winstanley, of which a copy is annexed. (No. 4.)

The matter was then referred to the Land Committee by a Minue, a copy of which is annexed. (No. 5.)

In their meeting on April 3rd, the subject was discussed, and it was decided that a recommendation should be made to the Council, that the lot should be sold to Mr. Winstanley. The following were the votes on that occasion.

Affirmative.	*Negative.*
The Vice President.	Professor Gwynne.
The Dean.	Professor King.

The Chairman (Vice President) giving the casting vote in the affirmative.

On April 12th, 1845, the Committee reported their recommendation, which was negatived by the Council, —the votes being,

Affirmative.	*Negative.*
The Vice President.	The President.
The Dean.	Professor Croft.
The Principal of U. C. C.	Professor Gwynne.
	Professor King.

The principal grounds of Mr. Winstanley's complaint are, 1st: That the promises given to him in the Bursar's office have not been confirmed by the Council; and 2nd, That they have in this case departed from the practice of recognizing the right of preemption in the lessees.

1. It appears that Mr. E. Winstanley in neither of his letters adverted to the circumstance which is positively asserted in the Memorial, that the Bursar had given a promise that the land should be sold to him.

On the contrary, it is stated in his letter of February 20th, 1845, that the answer which he obtained as to the land being for sale, was received from a Clerk, probably Mr. Hawkins. Now the Council have never recognized the authority of any of their Clerks to enter into engagements for the disposal of the property of the Institution, either by sale or lease, and although they have generally ratified engagements entered into by the Bursar, yet they do not feel themselves bound to confirm every promise given by that officer, inasmuch as he might exceed his powers.

2. The practice of permitting lessees to purchase the lands which they held under lease, has certainly been (as the Committee believe) the rule adopted by the Council in these matters, and the refusal to sell in such cases the exception. But the Council have not only never recognized any obligation (unless formally expressed) to sell to their lessees, but have published their intention of exercising an option.

The Committee feel it to be unnecessary to enquire into the grounds of the Memorialist's insinuation, that the conduct of the Council has been influenced by any personal feeling towards him, inasmuch as they have no doubt that in this case, as in all other transactions of the kind, the Council regarded solely the interests of the Institution under their care, and are persuaded that not even one member was induced by the personal solicitation to which Mr. Winstanley resorted, to vote either for or against his application.

The Committee regret that the Memorialist should have considered it proper to introduce observations not immediately connected with the facts of his case, and hazarded assertions on points on which it is impossible that he could have had sufficient information.

As he has, however, not confined his remarks to those matters which should have exclusively engaged his attention, the Committee feel it to be their duty to advert briefly to some of the points which he has considered himself at liberty to notice.

The Memorialist states that "Mr. E. Winstanley "made the application thus advised to the Sub-Com- "mittee, who had now resumed the sale of lands to an "extent which Your Memorialist believes showed no "diminution from the former operations of the Council. "The result of the determination of the Committee," &c. The Memorialist is incorrect as to these facts. No such application was made to the Sub-Committee, nor was the subject ever under their consideration by reference or otherwise. Mr. E. Winstanley certainly had interviews with each of the Members of that Sub-Committee, and learned from two of them, the Vice President and the Dean, that their opinion was that the lot should be sold to him, but neither of them expressed any favourable opinion of his *right*, as is subsequently stated by the Memorialist.

The Committee know not what grounds the Memorialist has for believing that the sale of lands by the Sub-Committee shew no diminution from the former operations of the Council. But of this there can be no doubt that that in which he asserts his belief is contrary to fact.

Neither can the Committee learn from what member of the Council the information was procured, that "the "opposition in the Council to sales has been got rid of "by the appointment of a Sub-Committee by whom "they were now exclusively managed, and that upon "application to that Committee, the Memorialist's "rights would be at once recognized."

This, however, is certain, that the information by whomsoever given is wholly incorrect.

The Memorialist further expresses the apprehensions which he has felt, "that the College Council were "disposing of a larger portion of the Endowment than "the necessities of the University might require."

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The Committee cannot but feel that the Memorialist is very unnecessarily apprehensive on a point on which it is impossible that he can have sufficient information to enable him to form any opinion entitled to consideration, and are inclined to think that he has been misinformed as to the grounds on which the Minute of His Excellency, to which he refers, was based.

The Memorialist also states that "he was informed "from undoubted sources, that even since the date of "His Excellency's Minute, the Council have made "sales of land to a very considerable extent in other "quarters." The Committee are not aware from what sources the Memorialist derived his information on this subject, but have no doubt that the statement of his informant is contrary to fact. It appears from the monthly returns of land sold since the date of His Excellency's Minute, that but six lots containing 550 acres have been disposed of. Of those there were four which the Council were under engagement to sell; one had been under consideration before the Minute was received, and was decided by the Council at the same meeting in which the document was first read,—and the remaining case was not a new sale, but permission to a new applicant to purchase what had before been sold to another party.

The Committee, in conclusion, desire to observe that there does not appear to be any reason for the complaint of the Memorialist (if he intended his remarks as such) that he received only verbal answers to his applications relative to the lot in question, for it appears that but one letter was addressed by him to the proper officer, and to that one he received a written reply.

The Committee annex (No. 6,) the Bursar's observations on those parts of the Memorial in which reference is made to him or his office.

(Signed,) JOHN McCAUL,
Chairman.

June 17th, 1845.

(*Appendix No.* 1.)

Toronto, 14*th June*, 1844.

Dr. Boys,
Bursar, King's College.

Sir,

I regret exceedingly that the College Council have come to the determination you inform me of, as it places me in a very embarrassing position, for upon the assurance I received at the College Office that the Council had rescinded their former order, not to sell their lands, and in all probability the lot I mentioned could be obtained at the minimum price of 25s. per acre, I entered into arrangements with Mr. Watkins (the lessee) to purchase his right from which I cannot now recede, and which I should not for a moment have contemplated, had I not felt secure from my information that I could ultimately obtain the fee simple of the land.

I considered that I was paying dear for it at the minimum price, for the land for agricultural purposes is really worth nothing, and is not, I should imagine, in a situation ever to become valuable for anything else, the frontage being very narrow; in addition to this, it is stripped of its timber, and full of pine stumps. I purchased the adjoining lot of 70 acres for £140 currency, of Col. Allan, in March, which has twice as much frontage, being only £2 per acre, and it has a valuable Cedar Grove on it, and the neighbouring farms are to be bought at a corresponding price; but as I have already given £150 for the lease, of course your lot is the one I want.

I shall feel extremely obliged if you will lay this matter before the College Council at their next meeting, as I feel convinced that, on a reconsideration of the subject, they will alter their determination of making a special reservation in my case.

I am, &c.

(Signed,) EDWARD WINSTANLEY.

(*Appendix No.* 2.)

Extract from the Minutes of the proceedings of the Council of King's College at a special meeting held on the 17th of July, 1844.

Present:—

The Honorable and Right Reverend the Lord Bishop of Toronto, President of the University.
The Rev. John McCaul, L. L. D. Vice-President.
" James Beavan, D. D. Professor of Divinity.
Richard Potter, Esq. M. A. Professor of Mathematics
H. H. Croft, Esq. Professor of Chemistry.
W. C. Gwynne, Esq. B. M. Professor of Anatomy.
F. H. Barron, Esq. Principal of U. C. College.

No. 12. Read a letter dated the 14th ultimo, from E. Winstanley, Esq. representing that from the information he had gained in the College Office that the Council were again selling their lands, he had felt secure that he should be allowed to purchase the East half of Lot No. 35, in the concession A. of Scarboro, and had, in consequence, purchased other land contiguous; and expressing his disappointment at now finding the Council make a special reservation of this lot, and praying of them to reconsider the case and allow him to make the purchase of it.

The Council regrets that Mr. Winstanley should have been under misapprehensions as to their intentions relative to the lot that he wishes to purchase, but cannot alter their determination of reserving it.

A true extract.

(Signed,) H. BOYS,
Registrar, K. C.

(*Appendix No.* 3.)

K. C. O. Toronto,
22*nd July*, 1844.

Sir,

Your letter of the 14th instant was read in the College Council at their meeting of the 17th instant, when I received instructions to inform you, that the Council regret that you should have been under misapprehensions as to their intentions relative to the lot which you wish to purchase, but cannot alter their determination of reserving it.

I have, &c.

(Signed,) H. BOYS,
Registrar, K. C.

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(*Appendix, No.* 4.)

Toronto, *20th February*, 1844.

Rev. Sir,

As I believe you are one of the King's College Council, I beg to address you on a subject connected with the Land Department of that Institution.

About twelve months ago, I purchased seventy acres of land on the Kingston Road about six miles from Toronto, from the Reverend H. Addington Simcoe, through his Power of Attorney, the Honorable Colonel Allan, and wishing to build a house and lay out grounds there, was anxious to extend my possession. Mr. C. Watkins, a gentleman residing in the neighbourhood, hearing this, sent to me to say that he held the adjoining property as a leasehold from King's College but that he wished to dispose of it. I returned for answer that I would make enquiries at the College Office, and if the fee-simple could be obtained at a reasonable rate, I would relieve him of his lease. I made the application, and was told that none of the College Lands were for sale, and that answer being returned to Mr. Watkins, my negociations with him were closed However, some few weeks afterwards Mr. W. told me that he had learned from good authority that the determination of the College Council not to sell their lands had been altered, and that they were now open for sale again, upon which I consented, (not without reluctance) to make enquiries again at the office, and if his information was correct, to negociate further with him. I therefore attended at the King's College Office, accompanied by my brother and Mr. F. Lewis, (Land Agent,) whom I had employed generally to transact my business. I again inquired if the land, describing it by number, &c. was for sale, and the Clerk answered "yes:" he then, at my request, put down my name as an applicant for the purchase of it; he told me the price would be fixed by the Council at their next meeting. I therefore left the office, perfectly assured that I could purchase the right of soil, and accordingly gave Mr. Watkins £150 for the unexpired term of his lease, which was an extravagantly high price, and was only done that I might be able to buy it from the College. Shortly after I directed Mr. Lewis to make further enquiries (that is, if the Council had determined the price,) which he did, and was told that the sale of that land was refused. Now in the mean time I had built my house, and relying on the information given me when my name was proposed as a purchaser, I had very materially altered my plans with regard to the situation of it,—that is, as I expected shortly to be the owner of the whole property, I had placed my house much nearer to the leasehold than I otherwise would have done. I addressed Dr. Boys in a letter afterwards, but without effect; I might perhaps not so fully have explained it as I ought. My present object in troubling you is to request that you will oblige me by again laying my case before the Committee, as it is a very serious affair to me; the land is of the poorest quicksand, and certainly will never be cultivated under a lease; and I may venture to say that few would be found who could cultivate even if they were the owners; the fact is proved by the surrounding land being all open and lying in common, the owners not thinking it worth fencing. Should there be any doubt entertained respecting the answer given to me at the office, it may not be out of place to say that I can obtain the affidavit of both my brother and Mr. Lewis. I beg to apologise for thus trespassing upon you.

And remain, &c.

(Signed,) EDWARD WINSTANLEY.

(*Appendix, No.* 5.)

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Extract from the Minutes of the Council of King's College at a meeting held on the 26th February, 1845.

Present:

The Honorable and Right Reverend the Lord Bishop of Toronto, President of the University.
The Rev. John McCaul, L. L. D., Vice President.
The Rev. James Beaven, D. D., Professor of Divinity, &c.
H. H. Croft, Esquire, Proctor, Professor of Chemistry, &c.
W. C. Gwynne, Esquire, M. B., Professor of Anatomy, &c.
John King, Esquire, M. D., Professor of the Theory and Practice of Medicine.
F. W. Barron, Esquire, B. A., Principal of Upper Canada College.

"No. 9. Dr. Beavan submitted a letter from Mr. "Winstanley, praying to be allowed to purchase the "east half of lot No. 35, in the broken front A. of "Scarboro', for reasons which he had not fully "stated on a former occasion.

"Referred to the Land Committee."

A true extract,

(Signed,) H. BOYS,
Registrar, K. C.

(*Appendix No.* 6.)

(Copy,)

Remarks of the Bursar on those passages in Mr. Winstanley's Memorial to His Excellency the Chancellor, dated 13th of May, 1845, which relate to the Bursar or his Office.

Passages of the Memorial.	*Bursar's Remarks.*
1. That the result of his inquiries at the Bursar's Office was, "that the Coun- "cil had invariably recog- "nized the right of pre- "emption in the lessees, and "that in his case there "could not exist the slight- "est difficulty in obtaining "a deed."	It has been the invariable custom of the Bursar to deny any right in the lessees to purchase. The utmost he could have told Mr. Winstanley was this, that if the Council were desirous of offering any particular lot for sale, they would, *in all probability*, give the refusal of it to the lessee. He may also have admitted the *probability* of their not refusing to sell this lot to Mr. Winstanley.
2. The Bursar promised to submit the lot to the Council, for the purpose of a price being put on it.	The Bursar made this promise and fulfilled it.
3. The Bursar said, "the "minimum price of the Col- "lege Lands, is five dollars "per acre, and in your case, "I should certainly say "*that* will be the maximum "also."	The Bursar has not the least recollection of using this expression; however it is a point of no consequence as the question is not about the price of the land.

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4.

Relying on the uniform and hitherto invariable usage of the College Council, of giving the lessee the privilege of pre-emption, and on the repeated promises made to Mr. E. Winstanley by the Bursar.

The Bursar denies having made any promises whatever to Mr. Winstanley, except that he would bring the case before the Council, which he did accordingly.

5.

On Mr. Winstanley expressing his surprise to Dr. Boys, that a refusal to sell should be given after a distinct promise had been made, Dr. Boys merely observed, "that the Coun- "cil were very arbitrary, "but that he thought he "could hold out strong "hopes that the lot would "eventually be conveyed to "your Memorialist."

The Bursar never could have admitted that a promise had been made; nor does he think he used the words here attributed to him. If he used the harsh term, "arbitrary," as applicable to the Council, he must have been in jest.

6.

"Fearing that the mat- "ter had not been fairly "represented to the Coun- "cil by the Bursar, and "that he might not have "informed that body of the "repeated promises made "to Mr. E. Winstanley."

The Bursar never concealed any part of the transaction from the Council, nor ever made any promises to Mr. Winstanley.

7.

"That the rejection of "his claims could only have "arisen under the grossest "misrepresentations on the "part of the officials in the "Bursar's Office, whose "conduct throughout has "been marked by insincer- "ity and prevarication," which he professes himself "prepared to establish "by unexceptionable testi- "mony."

The officials in the Burser's Office have done nothing in prejudice of Mr. Winstanley's case. For the Bursar's part, he has brought the case under the consideration of the Council at what he has considered to be the most favourable moments, which was all his duty permitted him to do; and he has acted throughout with a sincere desire to have the sale effected. He is quite certain Mr. Winstanley cannot bring forward any testimony sufficient to sustain the assertions here made.

(Signed,) H. BOYS,
Bursar, K. C.

King's College,
14th June, 1845.

No. 4.—Letter from the Private Secretary to the Reverend C. Winstanley.

Government House,
Montreal, *3rd July*, 1845.

Rev. Sir,

The Chancellor having referred your Memorial of the 13th of May last, relating to certain land which you are desirous of purchasing from the Corporation of King's College, to the King's College Council, and having received from them a Report thereon, I am desired to inform you that His Excellency does not conceive that he would be justified in interfering with that Body in the exercise of their discretion, in withholding the lot in question from sale, to which they are influenced, not by the Minute of His Excellency referred to by you, but because it appears to them to be conducive to the interests of the University to reserve the land.

The Chancellor, therefore, regrets that it is not in his power to afford you relief.

I have, &c.

(Signed,) J. M. HIGGINSON.

Rev. C. Winstanley,
&c. &c. &c.
Toronto.

No. 5.—Letter from the Private Secretary to the President of King's College.

Montreal, 7th *March*, 1846.

My Lord,

I am commanded by His Excellency, Earl Cathcart, to state to you his desire, as Chancellor of the University of King's College, to be furnished in a definite and official form with the views of the Council of King's College on the present state of their Charter, as amended by the Statute of Upper Canada, 7th William IV, chapter 16.

His Excellency is apprised that in each of the two last Sessions of the Provincial Parliament, a measure was introduced into the House of Assembly to amend that Act and the Charter, and that on each of these occasions the Council of King's College employed Counsel who were heard against these respective measures.

His Excellency has also been informed, that in the opinions of many, changes are still necessary to make the Intitution harmonize with the wants and wishes of the greater portion of the people of Upper Canada, for whose benefit the Institution was created and endowed; although great differences may and do exist in determining what those changes should be.

His Excellency cannot doubt the desire of the College Council that such changes (if any are necessary for this purpose) should be made as are calculated from their character to give general satisfaction, at all events to those classes of the community lying most within the range of the benefits of an Institution of this kind.

His Excellency entertains full confidence that every Member of the College Council will be desirous, so far as his conscientious convictions may permit, of adopting such a conciliatory course as, not merely general policy but also the inferences suggested by the somewhat anomalous position of that Body will, on careful deliberation recommend; and he therefore invites the College Council to take into consideration the present state and condition of the Charter,—its adaptation to its end,—and the amount of change which, in their judgment, will remove any reasonable objections to its general utility.

His Excellency is anxious in no respect to prejudice this important question, and he conceives that his situation, as Chancellor, justifies him in asking for such an exposition of the views of the College Council as will facilitate his arriving at a clear understanding of the whole subject, and enable him at a proper period

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to afford the information which it may be requisite to lay before Her Majesty for Her ultimate consideration and determination.

I have the honor to be,
&c. &c. &c.

(Signed,) J. M. HIGGINSON.

The Lord Bishop,
President, &c.
King's College.

No. 6.—Letter from the Private Secretary to the Principals of Queen's College, Victoria College, and College of Regiopolis.

Government House,
Montreal, *9th March*, 1846.

Rev. Sir,

I am commanded by His Excellency the Administrator of the Government, to state to you his desire to be furnished in a definite and official form with the views of the governing body of

Queen's College,
Victoria College,
College of Regiopolis,

on the present state of the Charter of the University of King's College, as amended by the Statute of Upper Canada, 7th William 4th, chapter 16.

His Excellency is apprised that in each of the two last Sessions of the Provincial Parliament a measure was introduced into the House of Assembly to amend that Act and the Charter, and that on each of these occasions the Council of King's College employed Counsel who were heard against these respective measures.

His Excellency has also been informed that in the opinions of many, changes are still necessary to make the Institution harmonize with the wants and wishes of the greater portion of the people of Upper Canada, for whose benefit the Institution was created and endowed, although great differences may and do exist in determining what these changes should be.

His Excellency cannot doubt the desire of the Council of King's College that such changes (if any are necessary for this purpose) should be made as are calculated from their character to give general satisfaction (at all events) to those classes of the community lying most within the range of the benefits of an Institution of this kind.

His Excellency is anxious in no respect to prejudge this important question, and is desirous of affording to the several Colleges now established in Upper Canada an opportunity of offering such an exposition of the views entertained by each, as will facilitate his arriving at a clear understanding of the whole subject, and enable him at a proper period to afford the information which it may be requisite to lay before Her Majesty for Her ultimate consideration and determination.

I have, &c.

(Signed,) J. M. HIGGINSON.

The Rev. Dr. Liddell,
Principal of Queen's College,
Kingston.

Rev. E. Ryerson, D. D.
Principal of Victoria College,
Cobourg.

The Very Rev. Angus McDonell,
One of the Trustees of the College of Regiopolis,
Kingston.

No. 7. Statement of the Council of King's College, with two enclosures.

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King's College Office,
Toronto, 24th March, 1846.

Sir,

The College Council having deliberated upon your letter of the 5th instant, addressed by command of His Excellency Earl Cathcart, the Chancellor of the University of King's College, to the President of that Institution, expressing His Excellency's desire to be furnished in a definite and official form with their views on the present state of their Charter, as amended by Statute of Upper Canada, 7th Wm. IV. c. 16., have agreed to the following Report, which they request you to lay before His Lordship at your earliest convenience.

I have, &c.

(Signed,) JOHN TORONTO.

J. M. Higginson, Esq.
Private Secretary.
&c. &c. &c.

To the Right Honorable Charles Murray, *Earl Cathcart, of Cathcart, in the County of Renfrew, K. C. B., Administrator of the Government of the Province of Canada, and Commander of the Forces in British North America, &c. &c. &c.*

May it please Your Excellency,

The Council of the University of King's College beg permission to commence this their Report by tendering to Your Lordship their grateful acknowledgments for the kind and considerate communication which Your Excellency has caused to be laid before them, and to express their hope that such an arrangement of the whole question of the University may now be adopted as shall satisfy every well informed and reasonable mind.

For a brief history of the University of King's College, the Council would most respectfully draw Your Excellency's attention to the Lord Bishop of Toronto's inaugural address as President at the opening of the Institution on the 8th of June, 1843, in which also will be found an authentic account of the great difficulties which attended the procuring of the Charter on account of its open and conciliatory principles which were at that time (1827) without precedent in such institutions either at home on abroad.

The Council would further solicit Your Excellency's notice to their Report of the 31st March, 1832, on a Despatch of Lord Goderich, then Secretary of State for the Colonies. In this Report the various objections made against the Charter were examined and fully answered. Nevertheless the then Council anxious that the University should go into operation, felt compelled, though with much reluctance to consent to some modification of its provisions; but the concessions they agreed to came to nothing, and produced no satisfactory result: the discussions continued with more or less acrimony till 1837 when the Provincial Statute (7 Wm. 4. c. 16.) was passed, embodying certain charges, which were deemed amendments, and in a great measure following, though not altogether, the Report of the Council just referred to.

The Council respectfully submit that the Union of the Canadas in 1840, has had, as was anticipated when the measure was in progress, a material effect on the Charter of the University, as well as on the amendments imposed by the Provincial Statute.

1st. As it respects the Chancellor. It was natural to appoint, in the Royal Charter, the Governor of the Province Chancellor of the University, because it was an institution which solely emanated from the Crown, and was to be established at Toronto then the seat of Government where he resided. The President and Senior Professor could have at all times easy access to him and take care that the reasons of all statutes, rules and ordinances should be fully explained and understood before they were proposed to the consideration of the College Council. But since the removal of the seat of Government to Montreal, the President and Senior Professor can have no personal communication with the Chancellor, and frequently all intercourse must be in writing. This renders in a great degree nugatory the wise provision in the Royal Charter which ordains that the Chancellors shall consult with the President and next Senior Member of the Council respecting all statutes, rules and ordinances to be proposed by him to the said Council for their consideration.

2nd. Experience has from the first promulgation of the Charter proved the inconvenience of the Chancellor being the person at the head of the Government as unfortunately giving to the institution a political character. This inconvenience was indeed anticipated by the President when the terms of the Charter were under consideration in London, but his objections were overruled by Earl Bathurst, on the plea that in his character of Chancellor, the Governor would act as the Chancellor, the Governor would act as the Chancellors of the Universities at Home, seldom interfering except on days of ceremony; and so far from admitting any thing political to be mixed up with the University affairs, if he acted at all, it would be only with its authorities. The practical working has not been found agreable to this plea or intention; and the appointment of Professors being in the Chancellor, much damage may be apprehended from the selection of men not sufficiently qualified, under the existing circumstances of the Province;—in fact it appears that motives of political expediency in at least one such appointment have not been concealed, nor under the present arrangement, aggravated as it is by the distance at which the Head of the University lives, and his comparative unacquaintances in statutes, rules and ordinances by which its operations are guided, and which must increase with every new Governor General, can the recurrence of such instances be altogether prevented.

Again the removal of the seat of Government to Montreal, nearly four hundred miles from Toronto, materially affects the composition of the College Council as settled in the Statute of 7 Wm. 4. ch. 16. By that Statute it is made to consist of twelve Members. But since the Union of the Provinces, five out of this number, viz: the Chancellor, the Speakers of the two Houses of the Legislature, and the two Crown Officers, can scarcely ever attend at the Board, and therefore can be of little or no benefit to the institution.

From these and other considerations the Council would most respectfully recommend that the Provincial Statute 7 Wm. 4. ch. 16. be repealed, and that the following amendments of the Royal original Charter be embodied in a new Charter to be issued by the Crown.

1. That the Chancellor of the University of King's College be chosen by the Convocation and with strict reference as far as may be practicable to English usage.

2. That the President be also Vice Chancellor and discharge the duties of the Chancellor in his absence.

3. That there shall be established in the University a Council of appointment to consist of never less than six Members: The President or Vice Chancellor, the Vice President and the Senior Professor or if necessary to complete the number of six, the next Professor in seniority; the fourth to be chosen by the Board or College or other body representing the Medical Profession, the fifth by the Law Society, and the sixth to be chosen by the Mayor and Town Council of the City of Toronto. The three last to hold office during four years, but may be re-elected. That by this Board the President, Vice President and Professors (except the Professor of Divinity who is to be appointed by the Archbishop of the Province, or Bishop of the Diocese) and the Principal of Upper Canada College shall be appointed, and their respective salaries and emoluments fixed and defined,—the rights of the present incumbents being respected; provided nevertheless that the Board shall make no appointment unless after full examination into qualifications for office, the vote be unanimous, and that in case of difference of opinion, the names of the two candidates having the majority of votes, shall be referred to the Chancellor for his final decision thereon. It shall likewise act as a Board of Audit.

4. That there be within the University of King's College a Caput of seven members, viz: The Vice Chancellor or President and the Vice-President *ex officio;* four Professors selected by the Faculties and to continue in office four years, and the Principal of Upper Canada College; and their rank, seniority and precedence shall be in the above order: That the Caput so constituted shall discharge all the duties and enjoy all the rights and privileges of the present Council as are set forth in the original Charter, to manage the whole property of the Corporation, alienate or exchange the same, purchase new property, &c. &c., provided nevertheless, that the expenses of the University shall not exceed its actual income, exclusive of what may be expended in the erection of the necessary accommodations, furniture, and other matters which may be justly deemed capital. The Caput shall appoint the Masters of Upper Canada College and make all the appointments not otherwise provided for.

5. That the Chief Justice of Canada West, and the Vice Chancellor of the Court of Chancery for the time being, be the Visitors.

6. That although the Council be convinced that a College for educating youth in the principles of the Christian Religion, as well as in literature and the sciences, is less likely to be useful and to acquire a lasting and deserved popularity, if its religious character be left to the discretion of individuals and to the chance of events, and suffered to remain the subject of unchristian intrigues and dissentions, they nevertheless feel that from circumstances over which they have no control, they are obliged to submit to that provision of the Statute of 7 Wm. IV. chap. 16, which relieves the members of the College Council from signing the Thirty-nine Articles; but, at the same time, they acquiesce willingly in that portion of the original Charter which ordains that no religious test or qualification be required or appointed for any person admitted or matriculated as scholars within the said College, or of persons admitted to any Degree or Faculty therein, save only to any Degree in Divinity, which shall be regulated as in the Royal Charter and according to the forms and regulations required of persons admitted to any Degree of Divinity in the University of Oxford: for whatever opinion may be entertained regarding tests in general by those who dissent from the Church of England, it would seem entirely at variance with the spirit of religious liberty to forbid the imposition of those tests by those and upon those who concur in holding them sacred. They also acquiesce in the declaration required by the Act 7th Wm. IV. chap. 16, and that it ought to be a qualification for all members of the Council and Caput. They

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are further of opinion that an oath of office should be required of all the members of the Council of Appointment.

The Council have thus, after much consideration, laid before Your Excellency their views on the present state of their Charter, as amended by the Statute of Upper Canada, 7 Wm. IV, chap. 16, as well as the alterations which, they think, might with advantage be introduced into a new Royal Charter, and in effecting which they will cheerfully give any aid in their power.

Before leaving this part of the subject, they crave the liberty of Your Excellency's indulgence to some additional remarks which the course of events renders worthy of attention.

Since the establishment of the University of King's College, three other Colleges have been established in Canada West: Victoria College, belonging to the Methodists, Queen's College, belonging to the Church of Scotland; and the College of Regiopolis, belonging to the Roman Catholics. The two former possess University privileges in virtue of Royal Charters. Before the rise of these Institutions, which are entirely exclusive and under the sole management of their respective Churches, the objections made to the University of King's College did not extend to any division of its endowment, but rested chiefly on religious considerations. Recently, however, instead of praying for separate endowments from the liberality of the Crown, the friends of Victoria and Queen's College are eager to cripple the efficiency of King's College, by sharing in her endowment. In justice to the Roman Catholics, it ought to be observed that they have acted with much propriety and moderation, and have made no such claim, although, should a division take place, they believe themselves entitled to consideration.

Now the Council of King's College are not unwilling to admit that when the Government thought fit to grant Charters establishing these Colleges in a new country like this where endowments from individnals are scarcely to be expected, a certain endowment should have been allowed to each, more especially as more than ample means seem to be at hand from the portion of the Clergy Reserves left at the disposal of Government by the 3rd and 4th Victoria, chap. 78, intituled, "An Act to provide for the sale of the Clergy "Reserves," &c. which are capable of yielding at once a competent revenue. Were a fair endowment granted not only to these three Colleges, but to such other denominations as to Government may seem meet, the University of King's College may be left untouched, and the 7th Wm. IV, chap. 16, being repealed, it will revert to its original constitution, with the liberty of seeking from the Crown such amendments of the Charter as have been mentioned, and as further experience may suggest for its more efficient and advantageous working.

This appears to be the most judicious and equitable manner of satisfying all parties and restoring peace to the community.

The different religious denominations would thus have the means of educating their youth according to their own wishes, and on their own principles—no room would be left for collisions or heart-burnings, and in a short time collisions on this subject would pass away—the different Colleges would only feel a noble emulation in excelling in sound learning; nor would this plan multiply Seminaries beyond their usefulness; the Goverment can limit them to the leading divisions of Christianity, and each will have according to their own accounts a sufficient number of students to instruct.

Should this method fail to be entertained by Government, although we can perceive no formidable or even reasonable objection, and a measure be proposed for dividing the endowment in order to bestow portions of the same upon the other three Colleges, the College Council will feel it their duty to protest against such injustice; and, if they submit, it will be under compulsion and with the avowed reservation of their rights to be claimed at the proper opportunity. Willingly to relinquish any part of their endowment which is not more than sufficient to support a University worthy of this great Country, and the increasing wants of its youth, would, in their opinion, be a desertion of their duty. Nevertheless, should such a measure be perpetrated, the College Council would at the least expect that regard should be had to the claim of the Church of England in point of numbers, and to the fact that she furnishes more than half of those who desire a collegiate education. Bearing in mind also that if the Medical Department and Upper Canada College are to continue component parts of the University of King's College, as they ought to do, the division should have respect to the decent maintenance of such valuable portions of the Institution, and which the other Colleges are not required to support.

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To leave the endowment entire is more preferable, not only because more just but because it meddles not with vested rights and offers no encouragement to futnre spoliation or attempts to interfere with the far richer and magnificent endowments of Lower Canada. The Charter should be so altered as to admit no political influence from which it has suffered so much, and be placed under the guidance and management of its own authorities; in like manner the endowments to be granted by the Crown to Colleges of other denominations, should be surrendered freely to their own management, provided that they spend only the annual income and preserve the capital entire.

The object of the Government should be to settle the question on such a just and equitable basis as may satisfy the honest and upright of all parties without regard to the clamours of the factious and the destructive who delight in sowing dissension, and are dismayed at the loss of a grievance.

The Council would have here closed their Report had not their attention been drawn to a Despatch from Lord Stanley while Secretary of State for the Colonies, which has lately appeared in the public prints, and which they deem of so much importance as to solicit for the Commission it recommends Your Excellency's favourable consideration.

The Council are the more inclined to place this document under Your Excellency's special notice, inasmuch as it relates to the constitution of King's College, New Brunswick, which is an exact copy of our Royal Charter, and granted a few days after ours was completed. On two points, and both of great importance, the advantage is with us; our Charter is entirely of Royal Grace, and did not, like that of New Brunswick, emanate in the first place from a Provincial Statute. Again, our endowment is also wholly of Royal Bounty, this University having never, like that of New Brunswick, received assistance from the Legislature of the Colony.

In regard to the measures introduced in each of the two last Sessions of the Provincial Parliament, the Council would remark that the changes they proposed were not merely offensive to the largest class of Her Majesty's subjects in Upper Canada, but totally excluded them, on conscientious principles, from participating in any advantages they might be supposed to offer; and what is worthy of special remark, the class thus offended and excluded are precisely those for whose more especial advantage the College was originally founded.

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The Council concur with Lord Stanley in opinion that whatever alterations are required, should be maturely weighed and recommended by men possessing an intimate acquaintance both with the theory and the practice of educating in religion, in literature and science those youths who from their birth, their fortune, or their natural talents, are probably destined for the public service as Legislators, Divines, Jurists, Physicians, Magistrates or Merchants; and we feel disposed, should it be Your Lordship's desire to solicit the appointment of such a Commission as Lord Stanley suggests, provided it be composed of men of high character from Oxford, Cambridge, and Trinity College, Dublin, who are familiar with the economy and discipline of Universities, and whose duty it should be to inquire into the constitution and management of all similar Institutions, regarding which they might procure authentic information and derive a system accommodated to the particular circumstances of this Province, it being quite obvious that it would not be easy to find such men as His Lordship describes in this Province, were there no fear of their being already prejudiced on the University question.

Such a Commission, to be armed with all powers requisite for conducting and defraying the expense of the necessary inquiries: it should be composed of men unanimous in the desire to promote public education among the wealthier classes of society on Christian principles; their range of enquiry should be as unlimited as is the object itself; and the result of their deliberations should be made final; and for this purpose an Address by both Houses of the Legislature should be made to the Crown to appoint such a Commission, and signifying their full acquiescence in the results to which it might arrive, appears indispensable.

Fully concurring in the remainder of this important Despatch, the College Council are encouraged to quote it in the hope that its suggestions may be adopted: "There is happily one principle on which amidst all "the discussions a general agreement prevails, and "which has been brought into full operation since the "commencement of this University, and by that prin-"ciple the Commissioners might be bound: it is that "King's College should be open as it ever has been, "so far as its advantages, emoluments and honors are "concerned, to every denomination of Christians; but, "that according to the original design the public wor-"ship performed within its walls should be that of the "Church of England, and that the Chair of Theology "should be occupied by a Clerk in Holy Orders "of that Church, of which of course therefore all "graduates in Divinity must be members. These "reservations in favor of the Church of England (the "Church of the Royal Founder) are made in no spirit "to which the members of any other Church could "even plausibly object. They proceed on no claim of "ascendancy or superiority. Their object is simply to "retain for the Anglican Church the advantage actu-"ally enjoyed by every other body of Christians in "Canada, of having at least one place of public edu-"cation in which young men may be trained up as "Ministers of the Gospel."

Should Your Excellency incline to the appointment of such a Commission as has been suggested, the College Council would willingly surrender their own opinions and suggestions to its guidance and decision, because they feel convinced that aided by its report a Royal Charter might be framed to meet every difficulty.

The whole of this question would thus be drawn from debate in a popular Assembly to a more tranquil, and, for this purpose, a more competent tribunal; without the excitement of those feelings which animate and occasionally discompose the deliberations of the Representative Branch of the Legislature. It would, we trust, be settled on such a basis as to conciliate the feelings, satisfy the judgment, and promote the interests of all classes, as far as such results are attainable in affairs of this nature.

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All which is respectfully submitted.

(Signed,) JOHN TORONTO,
President.

Dissentient from that part of the Report which acquiesces in the exclusion of all religious tests, excepting a declaration of belief in the Inspiration of the Scriptures and the Doctrine of the Trinity, required from the Members of the Council and Caput:—

Because I do not think that it provides sufficiently for unity of action on the subject of religion, on the part of the governing body; and because, the Government of the College having been given in the original Charter to Members of the Church of England exclusively, I think justice will not be done to the Members of that Church in Upper Canada, until that power shall be restored to them; unless it shall be proved that they have in any way abused it.

JAMES BEAVEN,
Professor of Divinity, &c.

Professor Gwynne's objections to the Report of the Council of the University of King's College, and suggestions offered by him in lieu of certain parts of the Report,—to enter which upon the Minutes, liberty was reserved to Professor Gwynne:—

That paragraph of the Report which relates to the appointment of Chancellor of the University annually by election, is objected to, because a periodical election, in the manner proposed, to so important an office in the University, is calculated to create an excitement and to produce a spirit of party rivalry prejudicial to the interests of an Educational Institution; because a similar periodical election has been found in the Universities of Cambridge and Oxford to be a fertile source of division and party feeling amongst the members of those Corporations; because in the opinion of Professor Gwynne, it is desirable that the Office of Chancellor should be as permanent an appointment as possible; because in the University of Dublin, where the appointment of Chancellor is permanent, much good is derived from the absence of those contentions which occur in the Universities named upon the periodical election; because it will be very difficult to find in the Province, persons qualified to fill the office; because the high position of the Governor General of the Province makes him the most proper person in a young Colony to discharge the important trust connected with that Office,—and his continuance in the office would prevent the constant recurrence of the evils which are apprehended from an annual election.

In relation to that portion of the Report providing for the constitution of a Council of Appointment, Professor Gwynne objects to the mixed character of the Council as suggested; because the affairs of the University should not be entrusted to a Board, any of the members of which are nominated by other Corporations, the nature and duties of which do not qualify them as the superintendents in any respect of a University Education, and much evil is to be apprehended

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from collision between the Professors of the University upon the Board, and those Members of the Board appointed by the other Corporations mentioned in the Report ; which latter members cannot be supposed to take as great an interest in the affairs of the University as Professors of the Institution ; because for the efficient discharge of the duties of the Council proposed, and to secure harmonious action, it is desirable that these duties should be wholly entrusted to the Professors of the Institution.

Professor Gwynne suggests the following proposition, as an amendment upon this part of the Report : That there be within the College a Board of Selection consisting of not less than six members, of whom the President shall, *ex-officio*, be one, and the remainder be elected annually from the whole body of Professors by the majority of the votes of the members in convocation assembled, on day of .
That it shall be the duty of this Board to select from the candidates presenting themselves for any professional office, or for the office of Principal of Upper Canada College, the names of two or three persons to be transmitted in alphabetical order to the Chancellor, in whom shall be vested the power of *appointing* to the vacant situation one of the individuals so selected. That it shall also be the duty of the Board to act as a Board of Audit. Professor Gwynne conceives that the election of this Board can be safely entrusted to the Members of Convocation, without being productive of the evil consequences alluded to in relation to the election of Chancellor ; inasmuch as there will be no *immediate* cause of excitement calculated to create division or rival interests, as the Board may or may not be called upon within the year to discharge the most important duty connected with their office ; and he is satisfied that the Members of Convocation constitute the body most capable of appreciating the individuals whose attainments are such as to enable them to discharge this most important duty ; and that they *will* select those best capable of supporting the interests and honor of the University.

In relation to that part of the Report which provides for the appointment of the Caput, and defines its duties and responsibilities, Professor Gwynne objects, because he is of opinion, that this Board should as much as possible be assimilated to the Caput of the Universities of Cambridge and Oxford, which latter is composed of the Heads of Colleges. In the University of King's College there is but one College. But in it, there are various departments. He therefore suggests, that the Caput be composed of *permanent* members to represent those several departments ; and is inclined to believe that the following alteration in this part of the Report would prove advantageous : That there shall be within the University a Caput composed of the President, Vice-President, or Senior Professor in Arts, the Professor of Mathematics and Natural Philosophy, the Professor of Chemistry and Experimental Philosophy, the Professor of Law, two Professors of the Faculty of Medicine, the Professor of *general* Botany, (when such appointment takes place,) and the Principal of Upper Canada College. That it shall be the duty of this Board to arrange the Curriculum or course of study in the several departments ; to appoint the necessary University Officers—the Dean, Proctor, &c., and arrange and distribute the *fees* by which these officers are to be remunerated for their services ; to appoint the Masters to Upper Canada College, and direct the general management of that Institution ; to appoint persons to fill all the subordinate offices in both Institutions ; and finally, to regulate the expenditure of that portion of the *annual income* which, after paying the salaries of the Professors, &c., may be placed at their disposal.

Professor Gwynne is strongly of opinion that it is of essential importance to the Institution that some means be devised, whereby the real estate and capital of the University may be removed entirely from the immediate control of any individual or number of individuals connected with the University, and placed in the hands of some responsible person or persons whose whole attention should be devoted to the protection of its estates—he or they might be selected by the Board of Selection, and *appointed* like the Professors by the Chancellor, subject, however, to removal from office in case of not giving satisfaction to the Board of Selection and Caput ; to which bodies he should be required to make quarterly returns of the state of the endowment and of the actual amount of funds at the disposal of the Caput. He or they should also be required to make such annual returns to the Governor in Council, and in such form as they might deem expedient. Ample security should be required for the trust committed into his or their charge ; and, in case of inefficiency or misconduct, the dismissal might take place in manner following, that is to say ; if at a special meeting of the members composing the Board of Selection and Caput collectively, convened by any three members composing these bodies, for the stated purpose of taking into consideration the conduct of the officer or officers entrusted with this department, three-fourths of the members present are of opinion that he or they should be dismissed from office, then the removal should take place accordingly.

Professor Gwynne is also of opinion that the salaries of the President, Vice-President, Professors and Managers of the Estate should be determined either by the Act of Incorporation, or in some other mode independently of these officers themselves ; and that the salaries so determined, together with the fees derived from the students attending their respective classes, should constitute the remuneration of the several Professors for their professional duties. He also thinks that it would be desirable in like manner to determine the order in which appointments to Chairs already established but not filled up, or hereafter to be established in the University, should take place, and that the salaries of these officers should be also specified ; with the understanding that whenever the annual income amounts to a sum or sums over and above that required for the working of the Institution as at present established, equal to the salary or salaries thus determined, the appointment or appointments shall be made.

All which is respectfully submitted.

(Signed,) W. C. GWYNNE,
Professor of Anatomy and Physiology in the University of King's College.

March 26th, 1846.

The Dissent of Professor Croft.

Professor Croft objects to that paragraph in the Report which provides for the election of Chancellor by the majority of votes of the members in Convocation assembled, on the same grounds as those mentioned in the objections of Dr. Gwynne.

(Signed,) HENRY CROFT,
Professor of Chemistry &c. &c. &c.

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(1*st enclosure in No.* 7.)

" New Brunswick.

" Message to the House of Assembly, 4th Feb. 1846.

" W. M. G. COLEBROOKE,
" *Lieut. Governor.*

" The Lieutenant Governor lays before the House " the copy of a Despatch referred to in his opening " Speech, relative to King's College.

" W. M. G. C."

The Document accompanying this Message being read at the Clerk's table, is as follows:

KING'S COLLEGE.

(Copy.)
No. 342.

Downing Street,
12*th November*, 1845.

Sir,

Referring to the correspondence which has already taken place between us on the subject of the Act of the last Session of the Legislature of New Brunswick to amend the Charter of King's College, I have now to convey to you the necessary instructions for your guidance in that case.

On the authority of the Solicitor General of the Province, and of the great American Jurist, Mr. Story, you suggest a prelimentary doubt, which, if well founded, must supersede all further discussion of this Act. It is the doubt whether the local Legislature possesses any constitutional right to alter the Royal Charter, without the express consent of the Corporate Body, and whether such an Act, if passed, would have the authority of law.

In applying the decision of Mr. Story (whatever that decision may be) to the case of a British Colony, there must obviously be great room for error, unless the most exact attention be given to the inherent distinctions between the constitutions of various States united together in one Federal Government, and those of our own Provinces united together as members of our extended Empire. That Colonial laws, repugnant to the law of England, are null and void, has indeed been repeatedly and very recently enacted by Parliament. But with that exception it has not occurred to me to hear of any cases in which the Courts of any British Colony could lawfully refuse to enforce obedience to the Acts of the Local Legislature.

I do not, however, propose to pursue further this abstract enquiry, since the question to which it refers does not really arise in the present case. It is not the fact, that the Charter of King's College is a Royal Charter in the proper sense of that term; it was not granted by the Crown in the unaided exercise of the Royal Prerogative, but on the authority of the Provincial Act of 1823, (4th George IV. chapter 3,) which enabled the Trustees of the College to surrender their Charter to His late Majesty King George the Fourth, on condition that His Majesty would grant another Charter for the re-incorporation of the College, the terms of which new Charter were partly left by the Act of 1823, and were partly left by that Act to the discretion of the Crown. The question in debate is, therefore, not whether the local Legislature have power to alter a Royal Charter proceeding from the Royal grace and favour, but whether they have power to alter a Charter, the promulgation of which was expressly authorized by themselves, and which, without their authority, could not have been promulgated.

Neither is King's College exclusively a Royal Endowment. For the General Assembly, first in 1823 and again in 1829, granted large sums for the support of it, and for the erection of the buildings in which the College was held. After the acceptance of such grants, the Crown cannot claim the same unlimited rights as might perhaps have been asserted if the Royal Bounty had been the only source of the collegiate property. The Legislature and the Crown are, at least joint Founders, and as no Legislative Act on this (or indeed on any subject) can be passed without the consent of the Crown, so can no Royal Grant changing the basis of this institution be properly issued without the concurrence of the Legislative Council and Assembly. Between those Houses and the Crown a virtual, if not a formal, compact must be held to result from the acts which they have thus already done in concert and concurrence with each other. In such a state of things it would be at once impolitic and unjust to insist on, or even to propound extreme, and at best, but questionable rights.

It follows, that if the Act transmitted to me for the Queen's assent were otherwise unobjectionable, Her Majesty would be advised to assent to it, without raising any objections; but it is certain that the changes intr - duced by it are highly offensive to one considerable class of Her Majesty's subjects in New Brunswick, and that the class so offended are precisely those for whose more especial advantage the College was originally founded. Even they, however, have most distinctly recorded their opinion, that the Charter requires some great amendments, and that, in its present form it has failed to produce any advantage commensurate with the expenditure incurred for its support. It has not, indeed, been merely unsuccessful, it has been productive of much positive evil; it has formed a monument but too impressive of the futility of a great project which had aimed at the highest public good, a monument dissuading and discouraging similar undertakings. However just may be the objections to the changes actually proposed in the Charter, it is therefore impossible to deny that numerous and great amendments of it are indispensable.

I have no hesitation in acknowledging my own inability to suggest what those amendments should be. Even if the College were to be established in England, for the education of young men for the highest pursuits of life amongst themselves, I should not scruple to avow the incapacity of Her Majesty's Executive Government to prescribe the right course of academical instruction and discipline to be observed in it. To form a correct estimate of such questions, a far deeper familiarity with them is necessary than is to be acquired during a pupilage in early life at one of our Universities. The science of education, especially in its higher walks, must be learned like other sciences—by patient study and long experience. All our Collegiate Institutions in England have been originally founded or progressively moulded by learned and scholastic men. We have no such institution deriving its internal economy from an Act of Parliament. The failure of a College regulated by an Act of the Provincial Legislature is no just subject of surprize.

The great requisite in the present case appears to be, that the alterations to be made should be maturely weighed and recommended by men possessing an intimate acquaintance both with the theory and the practice of educating in religion, in literature and in science, those youths who, from their birth, their fortune, or their natural talents, are probably destined for the public service as Legislators, Divines, Jurists, Physicians or Magistrates, or as Merchants on an extensive scale. To obtain such advice it would be necessary that a Commission should be constituted, and that it should be armed with all powers requisite for conducting and defraying the expense of the necessary enquiries. It should be composed of men unani-

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mous in the desire to promote education among the wealthier classes of society on Christian principles. Their range of enquiry should be as unlimited as is the object itself. Yet there is happily one principle on which amidst all the discussions before me, a general agreement prevails, and by that principle therefore the Commissioners ought to be bound. It is that King's College should be open so far as its advantages, emoluments and honors are concerned, to every denomination of Christians, but that according to the original design the public worship performed within its walls should be that of the Church of England, and that the Chair of Theology should be occupied by a Clerk in Holy Orders of that Church, of which of course, therefore, all Graduates in Divinity must be members. These reservations in favor of the Church of England are made in no spirit to which the members of any other Church could even plausibly object. They proceed on no claim of ascendancy or superiority. Their object is simply to retain for the Anglican Church the advantage actually enjoyed by every other body of Christians in New Brunswick, of having one place of education in which young men may be trained up as Ministers of the Gospel.

On this head I perceive, indeed, but one question on which any doubt has been thrown ; it relates to the religious text to be taken by Graduates in Divinity. The Act before me proposes to substitute for the test taken at Oxford, a declaration of belief in the Holy Scriptures and in the doctrine of the Trinity. Now if it were proposed that Theological Degrees should be granted Christians of every denomination, I could understand the motive which might suggest such an innovation. But when it is agreed that the Graduates are to be members of the Church of England, the imposition on them of a test at once so new and indefinite is recommended by no reason which I can either discover or conjecture. Whatever opinions may be entertained regarding the Oxford tests by those who dissent from the Church of England, it would seem entirely at variance with the spirit of religious liberty to forbid the imposition of those tests by those and on those who concur in holding them sacred.

If the Council and Assembly will concur in providing for the appointment of such a Commission as I have suggested, and for defraying the necessary expenses of it, I trust that no insuperable difficulty would arise in the choice of competent Commissionners.

Aided by their Report, a law might be framed either for altering the Constitution of the College in accordance with it, or for enabling the Crown to issue a Charter for that purpose. The whole of this question might thus be withdrawn from debate in a popular Assembly, to a more tranquil, and for this purpose, a more competent tribunal. Without the excitement of those feelings which must animate and occasionally discompose the deliberations of the Representative Branch of the Legislature, it would, I trust, be settled on such a basis as to conciliate the feelings, satisfy the judgment, and promote the interests of all classes, as far as such results are attainable in affairs of this nature.

In that hope Her Majesty's decision on the Act under consideration will be postponed until you shall have ascertained and reported how far the Legislative Council and Assembly are willing to concur in the course of proceeding which I have thus pointed out.

I have, &c.

(Signed,) STANLEY.

(*2nd Enclosure in No.* 7.)

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Report of the Council of King's College at York, (now Toronto) on Lord Goderich's Despatch,—adopted 21st March, 1832.

The College Council having deliberated upon the Despatch of the Right Honorable the Secretary of State for the Colonies, which was referred to them by His Excellency the Lieutenant Governor, and read in Council on Saturday the 10th instant, and the opinions of the Members of the Council upon questions severally proposed to them, it was Resolved by the Council, that the following Report be addressed to His Excellency the Lieutenant Governor as containing their opinion upon the subject of the Despatch, and that His Excellency be requested to transmit the same to His Majesty's Secretary of State.

May it Please Your Excellency,

The Council of King's College have maturely deliberated upon the Despatch of the Right Honorable the Secretary of State for the Colonies respecting King's College, which Your Excellency was pleased to refer for their consideration and Report.

Upon an attentive perusal of this Despatch it appears to be the desire of His Majesty's Government that the members of the Corporation of King's College shall surrender the Charter granted to them by His late Majesty together with the Endowment which has been graciously conferred upon the Corporation. That they are requested to make this surrender upon the assurance of the Secretary of State that no part of the Endowment shall ever be diverted from the object of the education of youth. That it will be proposed to the Legislature of this Province to erect another College upon such principles as they may approve, with a recommendation from the Government that they establish permanently in the new College a Divinity Professorship of the Church of England.

The Council takes these to be in substance the propositions contained in the Despatch, and they beg leave to add that the arguments used to induce a compliance and in the view taken of the difficulties which are supposed to be in the way of proceeding under the present Charter, they cannot but perceive an anxiety upon the subject that claims their respectful acknowledgment, and requires from them a corresponding frankness in answering the reference which His Excellency the Lieutenant Governor has been pleased to make to them.

The Council observes that the request to surrender the Charter is purposely addressed to " The Members " of the Corporation," of whom there are at present only the Chancellor and President holding a legal interest in the Charter itself as constituent members of the Corporation. The other gentlemen to whose consideration this Despatch has been submitted, having no other relation to the Corporation than as they happen to be for the time members of the College Council, are doubtful whether it was intended by the Secretary of State to request their concurrence in the surrender, or whether it may not merely have been desired that they should express their opinion upon the expediency of the course proposed. If it has been contemplated that they should join in the surrender, the first difficulty which presents itself is a conviction on their parts, that they have not the power.

His late Majesty very graciously intending to establish an University in this Province, " for the education " of youth in the principles of the Christian Religion " and for their instruction in Science and Literature," erected by Letters Patent a Corporation to consist of

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the Chancellor, President, Professors and Scholars of the proposed University, and gave to that Corporation under the style of "The Chancellor, President and "Scholars of King's College at York in Upper "Canada," a capacity to take, hold and possess, not as personal estate, for the use of the College.

The members of the Council who come under neither of the designations of Chancellor, President, Professors or Scholars, are not made by the Charter constituent members of the Corporation, and they therefore apprehend that they can concur in no act for surrending the Charter,—in other words, that they cannot yield up a grant they have not received.

It is true that the Charter provides for the existence of a Council within the Corporation, who are to frame Statutes, Rules and Ordinances for the good government of the College, and to manage its revenue, property and affairs; which Council is to consist of the Chancellor, President and seven of the Professors whenever a sufficient number of the latter shall be appointed being members of the Church of England. It is true, also, that in order to provide for the filling up of the Council at the first institution of the College, and previous to the appointment by the Chancellor of seven discreet and proper persons resident within this Province, to constitute in conjunction with the Chancellor and President the first or original Council of the College, a Council has been accordingly constituted by appointing seven persons under the authority of the Charter; but it seems to the Council to admit of no doubt that it is not within the power of the persons so appointed for managing *ad interim* the revenues and property of the College to join in any Act for divesting the College of all its "revenues and pro-"perty, leaving thereby nothing to be managed;" and it seems to them equally clear that under the general but temporary authority which the Charter gives them "to do such matters and things as to them shall seem "good and fit and useful for the well being and ad-"vancement of the College and agreeable to the Char-"ter," the persons so appointed could not join in annihilating the Corporation by the surrender of the Charter itself.

Such an act would not be agreeable to the Charter, but on the contrary directly and immediately destructive of it; and as it could not therefore come within the scope of the authority given to the Council by the general expression above referred to, so it seems to be at least equally evident that it could not come within the range of any of those powers or duties of the Council which are specifically enumerated, because these all have relation to the promotion and advancement of the purposes of the Institution, and would be plainly infringed by any act tending to its destruction. On the whole, what is here intended to be stated cannot be more distinctly expressed than by saying that these Members of the College Council consider themselves to have certain powers under the Charter, but none over it.

Although the Council have thought it proper to explain their view of this matter so as to obviate any possible misconception, they are not desirous of enlarging upon this legal difficulty, because they are not sure that the Secretary of State intended to address the request contained in the Despatch to any others than His Excellency the Chancellor and the President, although the general tenor of the Despatch allows that to be implied, and, however this may be, the Council would not be so uncandid as to intimate that the difficulty they have stated is their only difficulty; on the contrary, they wish it to be understood that if their scruples on that point could be removed, they would still not feel it right to concur in surrendering either the Charter of King's College or its Endowment.

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As the Council do not feel, so they cannot profess to feel a sufficient assurance that after they should have thus consented to destroy a College founded by their Sovereign under as unrestricted and open a Charter as had ever passed the Great Seal of England for a similar purpose, the different branches of the Legislature would be able to concur in establishing another that would equally secure to the inhabitants of this Colony through successive generations the possession of a seat of learning in which sound religious instruction should be dispensed, and in which care should be taken to guard against those occasions of instability, dissention and confusion, the foresight of which has led in our Parent State to the making an uniformity of religion in each University throughout the Empire an indispensable feature in its constitution. If the objections entertained by the Council against the surrender of the Charter were not insurmountable, no stronger inducement could be offered than the request which His Lordship's Despatch conveys; for the Council cannot fail to be sensible that such a request can have been dictated only by a supposed necessity for departing from established principles in order to promote the peace and contentment of the Colony.

With the opinions, however, which the Council entertain, and with the opportunity of forming those opinions which their residence in the Colony affords them, they could never stand excused to themselves or others, if they should surrender the Charter, supposing that to be within their power, so long as there is an utter uncertainty as to the measures that would follow. The moral and religious state of more than three hundred thousand British subjects is at present involved in the proper disposal of these questions, and before very many years will have elapsed, more than a million must be affected by them. The Council, therefore, whatever results might be obtained by other means, could not justify to themselves the assuming the responsibility of endangering the very existence of this Institution. They would feel bound to look beyond the movements and discussions of the passing hour, and could not even, if they concurred in the view of present expediency, consent to pull down the only foundation which at present exists in Upper Canada for the advancement of religion and learning upon a system which has not been repudiated by the Government in any part of His Majesty's Dominions.

The College Council would entertain no objection against the surrendering the Charter of Incorporation as a mere formal act, to be immediately followed by the granting of another Charter under the Great Seal upon terms that shall have been fully settled and agreed upon previous to its surrender, so that the existence of a College in Upper Canada should not be dependent upon the chance of the Legislature or the Government devising a Charter which all religious sects, and all parties shall forbear to complain of.

If the power of surrendering clearly lay in their hands, they should feel this caution necessary, because they are strongly impressed with the conviction that the proposition which must be made to the Legislature to concur in framing a Charter for a new College, would either be attended with no effectual result, or would lead to the establishment of such an Institution as would be without an example in the British Dominions, and they are apprehensive that the consequence would very probably be that after the delay of some years, the small chance of an union of sentiments upon this subject might lead His Majesty's Government to give up the attempt, and appropriate the surrendered endowment (which His Lordship declares shall never be diverted from the object of the education of youth) to the advancement of Education in some other manner than by the foundation of an establishment the Council considers to be indispensable to the future welfare of the Colony.

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To give every facility in their power to such measures as are within the discretion of His Majesty's Government for overcoming the supposed difficulty, the College Council take this occasion, the first that has been presented to them, to state what are the modifications of the Charter which in their opinion it would be desirable to introduce, taking the several points which have been the subject of discussion in the order in which they occur. The Council are willing that the Bishop of Quebec being Visitor should not be insisted upon. They approve of the Charter in that point as it stands, and think it liable to no just exception ; but, if it be excepted against, they would not regard that provision of the Charter as indispensable, because it is not really essential, and because usage in similar Institutions does not require it. They think, however, that no person should be Visitor who is not a Member of the Church of England, unless indeed it should be thought advisable to make the Court of King's Bench visitor in conformity to a general and constitutional principle.

The Council are willing that the President of the College, on any future vacancy, should be any Clergyman in Holy Orders of the Church of England whom the King may think fit to appoint. That provision in the Charter which makes the Archdeacon of York President, *ex-officio*, the Council admits to be inexpedient since it may very well happen that the qualifications which may very properly lead to an appointment to the Archdeaconry of York may not include all that are necessary for the important and particular duties of President of a College. The Council takes it for granted than no one contemplates any thing else than that the present Archdeacon of York, who specially named in the Charter, is to continue President so long as he may consent to do so.

The Council think it desirable that the subscription to the Thirty-nine Articles should be dispensed with in respect to the Members of the Council, who they would nevertheless recommend should be Members of the Church of England ; but if His Majesty's Government deems a relaxation of the Charter on that point indispensable, the Council are disposed respectfully to acquiesce.

With regard to the clause in which mention is made of the religious tests or qualifications to be required of persons to be admitted to a Degree in Divinity, the Council are willing it should be altered so as to read thus : "And we further will, ordain and appoint that no "religious test or qualification shall be required of or "appointed for any person admitted or matriculated as "Scholars within our said College ; or of any persons "admitted to any Degree, or any Art or Faculty there-"in, save only of persons admitted within our said Col-"lege to any Degree in Divinity, respecting whom "such regulations may be made as the College Council "shall think fit."

The Council have thus respectfully laid before Your Excellency the objections which occur to them against the surrender of the Charter, for the purpose of throwing the whole matter as a perfectly open question before the Legislature, and they have also stated what are the alterations which they think might with advantage be made in the Charter, and in effecting which they will cheerfully give any aid in their power.

Before taking leave of the subject, however, they cannot forbear to declare that they have experienced no little surprize and mortification in perusing some of the arguments which His Majesty's Secretary of State has advanced for proving the propriety and necessity of surrendering the Charter.

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In the first place, they humbly submit that the Charter of King's College cannot reasonably be called exclusive and restrictive by comparison with that of any other College in the Dominions of the Crown. And in the next place, they cannot concur in the assumption that anything contained in the Charter has necessarily had the effect of counteracting or defeating the design of the Institution, and depriving the Province of the advantage anticipated from its adoption.

They admit that representations have been made, complaining of their Charter in common with a multitude of other supposed grievances, and that His Majesty's Government in deference to these representations, has suspended the operations of the College Council ; but they cannot admit that this suspension of proceeding has been otherwise necessary than from this direct interposition proceeding from His Majesty's Government.

The Council perceives that His Majesty's Secretary of State notices the fact, "that whilst no positive steps "have been yet taken for giving to King's College any "practical existence, the new College which Your "Excellency has established has been forwarded with "considerable activity, and is now open for the instruc-"tion of youth ; from which fact it is assumed that ex-"perience has demonstrated that under the peculiar "circumstances of Upper Canada, a College with re-"strictive tests is altogether inoperative for any useful "purpose."

The Council do indeed very much regret, that it should have escaped the recollection of His Majesty's Government, that the progress of King's College has been obstructed by such a direct interposition of the Government, under the authority of the Secretary of State, as excludes all inferences of the kind, and such as left no room for deliberation, much less for experiment. In justice to themselves and to prevent further misapprehension on this subject, the College Council take this occasion to explain how it has happened that this Institution, founded on a solemn Charter under the Great Seal of England, has not been called into action in the few years that have elapsed since they were appointed to manage its affairs : they, therefore, beg to state that, upon the arrival of the Charter, which was a short time before Your Excellency assumed the Government of this Province, the necessary measures were taken by His Excellency the then Chancellor, and by the College Council appointed by him, for carrying its provisions into effect. In a short space of time they had purchased a very eligible site for the College ; they had had a minute Survey and Report made of the value of all the lands which constitute the Endowment ; and had made such arrangements as were rapidly producing the necessary funds. They had procured a model and specifications of suitable buildings, and were on the very point of advertizing for contracts to erect such parts of them as would suffice for the immediate purposes of the Institution.

They were proceeding in all this without difficulty or hesitation when Your Excellency succeeded to the Government of the Province, and in a short time afterwards (acting doubtless upon instructions received from His Majesty's Secretary of State) convened the College Council for the purpose of making to them the announcement that no further steps should be taken. This announcement was made in terms so positive, that it was declared that one stone should not be put upon another until certain alterations in the Charter had been made or proposed to the Legislature, and that as Chancellor Your Excellency would utterly refuse to concur in any further measures of the Council under present circumstances.

The Council could but submit in the earnest hope that a more mature consideration of the subject would lead to the removal of a prohibition for which there was not in the judgment of any member of the Council at that time, any adequate cause.

Either at that time or immediately after Your Excellency urged the necessity of enlarging the foundation of the Royal Grammar School at York, in order to make it better serve the purpose of a Preparatory School to the proposed University. In their desire to promote education by all possible means, the members of the College Council have individually and collectively given every aid to this purpose of Your Excellency; and they have cheerfully given their concurrence from time to time in measures so far beyond the original design that they have incurred the responsibility of advancing out of the funds of King's College more than Thirteen thousand pounds, for the erection and support of this minor Institution, to which His Majesty's Secretary of State alludes in his Despatch.

Under such encouragement that Institution has had no difficulty in going into actual operation; and while in consequence of the professed jealousy of the National Church, His Majesty's Secretary of State has, by an express direction to Your Excellency communicated to the College Council, confirmed the injunction against any proceeding under the Royal Charter of King's College; notwithstanding the Principal, Vice-Principal, the two Classical Masters and the Mathematical Master happen at present to be Clergymen in Holy Orders of the Church of England, is proceeding in the business of instruction, and children of parents of all persuasions are availing themselves of its advantages, as it was always evident to the College Council they would unquestionably have done, in respect to King's College, if it had been permitted to be opened.

There is, therefore, this striking difference, that while the one Institution has been allowed and encouraged to proceed, and has been enabled to proceed from the funds thus temporarily advanced, the other possessing a sufficient endowment and founded by a Royal Charter has been restrained from proceeding by a peremptory interposition of the authority of Government. The fact has been the occasion of great regret and disappointment to the College Council, because its effect has been to withhold for some years from the youth of Upper Canada, to the irreparable loss of many, those benefits which no other Institution in the Colony is either calculated or intended to supply. But it is more than ever painful to them now to find that the suspension thus occasioned by the command of His Majesty's Government, is advanced as a proof that the Institution has been established on principles inherently defective, and is made use of as an argument for the surrender of their Charter and endowment.

The College Council cannot but consider this as singularly unfortunate, because they entertain no doubt whatever, but on the contrary are convinced by past and present experience, that all that was wanting to show the unreasonableness of the objections that were urged, was to have suffered the College to proceed in carrying into effect the beneficent objects for which it was provided. They cannot on any satisfactory ground account to themselves why in a Colony of Great Britain, receiving annually vast accessions of inhabitants from the United Kingdoms, those constitutional principles which are necessary to support a national religion should not be as decidedly maintained here as in other Colonies of the Crown.

The Council think it right to state that they are unanimous in the opinions respecting the alterations which might be made in the Charter, except that the Chief Justice desires it to be noted that it is not with his concurrence that the assent is expressed dispensing the provision that the members of the Council shall be members of the Church of England, it being his conviction that a College for educating youth in the principles of the Christian religion as well as in literature and the sciences, is less likely to be useful and to acquire a lasting and deserved popularity if its religious character is left to the discretion of individuals and to the chance of events, and suffered to remain the subject of unchristian intrigues and dissensions, than if it is laid broadly and firmly on its foundation by an authority that cannot with any reason be questioned: he would think the necessity for any restriction with respect to the members of the Council superseded, if the Charter were to contain a declaration such as the regulation adopted by the Council of King's College, New Brunswick, (the members of which are required to be of the Church of England,) viz., that no Professor shall teach in the College, any principles contrary to the doctrines and dicipline of the United Church of England and Ireland, or to good morals, or the British Constitution as by law established.

He does not desire to see a subscription to the Thirty-nine Articles or any other test exacted, but merely such a declaration of the religious character of the College as shall leave no parent in doubt of the religious principles that are to be imbibed in the University.

All which is respectfully submitted.

(Signed,) JOHN STRACHAN,
Archdeacon of York,
President.

No. 8.—Statement of the Trustees of Queen's College, with an Enclosure.

STATEMENT by the Board of Trustees of Queen's College, unanimously adopted, March 14th, 1846, being an "Exposition" of the views of the Board on the subjects mentioned in a recent communication from His Excellency the Administrator of the Government, and as desired to be given "in a "definite and official form."

In order that not only the views of Queen's College, but the position of the Church of Scotland in Canada, in reference to King's College at Toronto, may be understood, it may not be unnecessary to state that although the original Charter of King's College was granted in 1827, the College was not opened till 1843. That immediately on the character of the Charter being known in Canada, the most wide-spread dissatisfaction was expressed on account of its exclusiveness. That in their Report on the Civil Government of Canada in 1828, the Select Committee of the House of Commons advised a "change in the Constitu-"tion of the College Council," and that "a Theological "Professorhip of the Church of Scotland should be "established in addition to that for the Church of "England." That the Members of the Church of Scotland in common with the whole population of Canada, did not, until 1837, see any amendments made in the Charter of King's College, although during the period of ten years the most urgent representations were addressed to the College Council to that effect, by the authorities not only in Canada, but in Britain. That in the hope, however, that the requisite alterations upon the Charter would be effected, the members of the Church of Scotland refrained from taking any steps to originate an Institution for the purpose of educating Candidates for the Ministry until the

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year 1836, when initiatory measures were adopted with the view of establishing merely a Theological Seminary. That after several years more elapsed, and nothing was done to put King's College in operation, even under the amended Charter, the Members of the Church of Scotland felt themselves constrained to use efforts to provide not merely for supplying a Theological, but also a University Education, which the Church of Scotland holds to be indispensable before Students are admitted to the study of Theology. That in 1840, a Provincial Act was passed establishing a "University at Kingston" for the purpose of affording such an education as was deemed requisite, and which many began to despair of seeing furnished by King's College at Toronto, which had been publicly endowed for the very purpose of affording a University Education to such as might desire it.

That said Provincial Act was disallowed, in consequence of the Trustees having applied to the Crown for a Royal Charter with the altered designation of "Queen's College," the Law Officers of the Crown in England having, as follows, expressed their opinion on the point, whether the asked for Charter could be superinduced on the already passed Act of the Provincial Legislature,—that "the Act already passed may, "in point of Law, be confirmed by Her Majesty, but "the proposed Charter could not be superinduced "upon it." That "the Act having received the "Royal Assent, has the force of law in Upper Ca- "nada, and is binding on the Crown, and that the only "mode seems to be to disallow the Act, and to grant "a new Charter, framed as the orignal Incorporation "and foundation of the Institution." This opinion was expressed in the end of 1840, and in 1841 a Royal Charter was obtained, establishing Queen's College as a University, under which Charter the Trustees are now acting. The business of teaching in the University was commenced in the beginning of 1842, and has been conducted hitherto in temporary buildings hired for the purpose.

Almost immediately after the work of teaching in Queen's College had commenced, the foundation stone of King's College at Toronto was laid, and thus some proof was given, that University tuition would ere long be begun there also. In consequence of this movement of the authorities of King's College, the Trustees of Queen's College, at their meeting on the 8th September, 1842, embodied their sentiments on the whole subject in a Resolution for the future guidance of the Board in this matter. (See this Resolution.) Acting upon this Resolution, the Trustees of Queen's College, in the beginning of 1843, deeming it an act of propriety and courtesy to the authorities of King's College to do so, appointed a Deputation of two of their number to proceed to Toronto, with authority and instructions to lay before the Council of King's College the exceeding desirableness of union on an equitable basis in so important a matter; to ascertain the sentiments of that Body upon the subject, and, if possible, to secure their co-operation in the attainment of an object so long regarded as necessary. With the view of facilitating the consideration of the subject by the Council of King's College, the Trustees of Queen's College drew up and subscribed a statement embodying the views of the Trustees, and after communication with most of the Members of King's College Council individually, the Deputation left with the President of the College a copy of that Statement, with the request that it might be submitted to the Council for consideration, and that their deliberate opinion as a Body might be transmitted to the Board of Trustees of Queen's College at Kingston. In a communication some time afterwards addressed by the President of King's College to a member of the Deputation, the President intimated that he did not feel it to be his duty to bring such a subject under discussion or consideration by the Council. The statement of views here referred to was shortly afterwards embodied in the form of a circular addressed to the subscribers to Queen's College by the Trustees. This circular was addressed in the most public form possible to all the subscribers to Queen's College by the Trustees, with the view of eliciting an expression of opinion from the subscribers concerning their approval or disapproval of the sentiments and intimated plan of proceedings which it contains. No expression of dissent from the sentiments contained in that document has ever reached the Trustees from any subscribers to Queen's College. Special attention is requested to that document, because of its agreeing substantially with the principles which form the most striking features of the Bill introduced into Parliament on the subject, by the Honorable Mr. Draper. The Trustees of Queen's College have cordially and earnestly petitioned the Legislature that that Bill may pass into a Law. They regard it as embodying the same general principle as the measure introduced, towards the close of 1843, by the Honorable Mr. Baldwin, and, as the details of Mr. Draper's Bill are more simple, though some of them, in the opinion of the Trustees, manifestly admit of improvement, the Trustees have not hesitated to express their general preference of the latter measure.

While the Trustees believe that to impose any religious test upon *Students* attending the University would not only be unprofitable as regards the interests of the Institution, but detrimental to the general interests of the country, which ought to be made to experience as widely as possible the benefits resulting from a knowledge of the arts and sciences, they are firmly persuaded that to withdraw from the *Professors* the present religious test of the amended Charter, which is also embodied as a part of Mr. Draper's Bill, would prove in the highest degree injurious to the best interests of the community at large, and would also tend to defeat one of the great objects of the University, inasmuch as were the present general test removed, the confidence of all those throughout the country who regard the Articles of Faith which constitute that test essential in forming the foundation of Christian practice, would immediately and justly be forfeited, in the case of every Professor, who, by thus substantially refusing to subscribe it, would be regarded as giving no ambiguous intimation of his freedom to ridicule and sneer at doctrines which his Students may have been trained by parental solicitude and piety to esteem as of supreme importance and value.

The advantages which would result from the passing of Mr. Draper's Bill, the Trustees of Queen's College believe to be incalculable. The bringing together for several years at the most important periods of life of all those youth of the Province who might be expected afterwards to occupy the most influential stations in the community would be secured. The stimulus to exertion caused by a considerable number in a class, would be added to the other motives to successful literary effort,—an advantage *needed* in a country like Canada, where for many years to come University Students must be but few. While no separate Ecclesiastical body in Canada is able adequately to support, or efficiently to conduct a University, each such body, in the exercise of becoming zeal, and liberality on the part of its members, might fairly be expected to be able to support a Theological College, established at the seat of the University. Besides, as each of the three Colleges now in operation in Upper Canada is established, amongst other purposes, "for the educa- "tion of youth in the principles of the Christian Reli- "gion," and as it seems to be admitted to be next to impossible to have the principles of the Christian Religion taught in the publicly endowed University

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by the establishment in it of *Chairs* or *Professorships* of Theology for *all* the various Ecclesiastical bodies in the country, the Trustees believe, that by a happy conception, the Bill of Mr. Draper removes the difficulty which on this point has been so often expressed by constituting, as *integral parts* of the University, the several Theological Colleges which may now or hereafter be established upon such safe and prudential principles as the Government may prescribe; leaving every such Theological College to have a separate corporate existence, and internal management of its own, and subject to the Governing Body of the University only in such matters as may be of a general disciplinary character; and at the same time giving to each Ecclesiastical Body, through the Theological College, which it may have established, a certain and prescribed amount of representation in the Governing Body of the University. The Trustees of Queen's College regard this as the prominent and most valuable feature in Mr. Draper's Bill. By this measure also Ecclesiastical superiority, caused by anything otherwise than what is fair, equitable and honorable, would be effectually prevented. According to the present amended Charter of King's College, the Trustees believe, with many persons in the Province, that unduly acquired Ecclesiastical superiority is only in some measure *concealed*, not *prevented;* inasmuch as the parties who obtained the original Charter, though now constrained in some measure to act upon the amended one, must be expected, according to the well known principles of human nature, to endeavour to secure the operation of the principles of the Charter which they *sought*, and which even yet they do not scruple to maintain they have neither repudiated nor abandoned. The appointment now and then of a Professor from other ranks than those of the dominant Ecclesiastical body in the College Council, cannot reasonably be expected to secure the object at which the intelligent of the community are aiming in their continued discussion and agitation of this important question; and the Trustees are thoroughly convinced that the longer the Government delay the equitable settlement of this question the more extreme and revolutionary will be the character of the proposals made upon the subject, for the most unworthy political purposes, and that consequently the more difficult will be the task of any administration so to adjust the matter, as to secure the high and noble objects contemplated by the Royal Founder of the Institution. It is believed that unless a speedy, equitable and safe remedy be applied, the case of King's College will afford a proof and illustration of what has hitherto been sometimes witnessed, to the cost of all parties concerned, that the extreme of domination and injustice never fails to produce the opposite extreme of general dissatisfaction and lawless disorder.

With respect to that part of both Bills which have been introduced on this subject,—referring to a pecuniary grant to the Theological Colleges from the funds of the University, the Board of Trustees have to state that, entertaining as they most cordially do what is generally termed the principle of establishments, that it is the duty of the State to provide for the teaching of religion within its boundaries, they have no objection of any sort to the reception of such pecuniary grant.

But, in addition to this, the Board have particularly to state, that Queen's College is an Institution to which the attention of Government, and also that of the Council of King's College ought to have been directed much more than it appears to have been. This belief of the Trustees is grounded on the following considerations:—

As appears from part of a quotation already made, the Select Committee of the House of Commons in 1828, advised, "that a Theological Professorship of "the Church of Scotland should be established in "King's College, in addition to that for the Church of "England." In January, 1837, when the amendments on the original Charter were under consideration by both Houses of the Legislature in Canada, the Select Committee of the Legislative Council to whom was referred the Bill sent up from the House of Assembly, amongst other things report as follows: "Your Committee in order to reconcile all interests, felt inclined "to propose that a Theological Professorship of the "Church of Scotland should be placed on the foundation, as suggested by the Select Committee of the "House of Commons in 1828, but on further examination it was found that the College Council has full "power to do this without special enactment. Your "Committee therefore think it sufficient to recommend "it to be done as soon after the College is put in operation as may be convenient."

And the same point is referred to in a communication addressed by Sir George Grey to the Honorable Wm. Morris, of date 1st July, 1837, in the following terms: "Lord Glenelg will direct Sir F. Head to "convey to the Council of King's College, the strong "recommendation of Her Majesty's Government that "a Theological Professorship in accordance with the "doctrines of the Church of Scotland should be forthwith established."

And in 1840, when for the urgent reasons before mentioned, the Members of the Church of Scotland in Canada procured an Act to be passed establishing the "University at Kingston," the last enacting clause of that Act was found to run thus: "That so soon as the "University of King's College, and the College hereby "instituted, shall be in actual operation, it shall and "may be lawful for the Governor, Lieutenant Governor "or person administering the Government of this Province, to authorize and direct the payment from the "funds of said University of King's College, in aid "of the funds of the College hereby instituted, of such "yearly sum as shall to him seem just, for the purpose "of sustaining a Theological Professorship therein, "and in satisfaction of all claim on the part of the "Church of Scotland for the institution of a Professorship of Divinity in the University of King's College, "according to the faith and discipline of the Church "of Scotland."

Although that Provincial Act was disallowed by Her Majesty, for the reasons specified in a previous part of this statement, in which the opinion of Her Majesty's Law Officers is quoted, yet most assuredly the spirit and design of this last clause of it were not interfered with, as is evident from one of the sentences of that very opinion. That sentence is as follows: "If any Legislative enactment respecting the funds of "the University should be necessary, this may follow "upon the Charter." Which statement regarding the funds of the University of Queen's College, is repeated in the Despatch of Lord John Russell to the Governor General, to whom the opinion of the Law Officers respecting Queen's College was transmitted.

But not only has there been a Provincial enactment, sustained by a specific mention from London, both on the part of the Law Officers of the Crown, and of Her Majesty's Principal and Under Secretaries of State for the Colonies, that there should be an annual payment from the funds of King's College to Queen's College, but there is abundant and satisfactory evidence to prove, that by parties representing the Government in Canada, King's College, and Queen's College, respectively, specified the sum to be obtained by Queen's from the funds of King's College was a thousand pounds per annum.

Although, however, the facts are as now stated, and although there has been for the last three years a Theolo-

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gical Professor in connexion with the Church of England in King's College, neither the Government nor the Council of King's College has done any thing in reference to a subject, on which the Imperial Government has made the strongest representations, and which has also been matter of negociation on the part of the authorities of King's with the friends of Queen's College. Moreover, although Queen's College has been established by private means alone, which being obtained almost entirely in this country, it cannot but we well known, must be altogether insufficient to support a University; and although the Royal Charter, which was declared to be necessary for the purposes sought to be attained, was procured at the heavy expense of upwards of seven hundred pounds, yet with the exception of a grant of five hundred pounds from the Legislature at the close of last Session, for the year 1842, (the first year during which Queen's College was in operation) nothing whatever has been granted out of the public funds of the Province for the support of this Institution, while very different has been the treatment shewn not merely to similar, but also to very different literary Institutions throughout the country.

The Board of Trustees feel prompted and encouraged to enter thus fully into all these matters, from observing the desire expressed by His Excellency "of affording to the several Colleges now established in Upper Canada an opportunity of offering such an exposition of the views entertained by each as may facilitate his arriving at a clear understanding of the whole subject."

It will thus be seen, that the position occupied by Queen's College, and by Upper Canada in reference to a University Education, is substantially this, that at a time when the people of Western Canada might reasonably have expected that some provision should be made for securing to them and their posterity the benefits of a Literary and Scientific Education "founded on the principles of the Christian Religion," a munificent provision *was made* by Royal Bounty for this important purpose; that after a lapse of thirty years, a Charter from the Crown was obtained for the establishment of the University, the terms and character of which, when it was obtained, were unknown by the very people whose general and lasting welfare was meant by the endowment of the Royal Founder to be secured, and when the people did know the character and terms of the Charter, their disapprobation of them was expressed in the most emphatic and unequivocal manner; that for ten years the procurers and holders of the Charter, contested and challenged the right and the power of any authority whatever either in Canada or in Britain, to wrest it from them, or even to change it; that the Members of the Church of Scotland, foreseeing no issue to this contest, and ignorant as to the character of that issue, perceiving also, that as time passed away, the literary and religious interests not only of their own body, but also of the public generally, were suffering loss, began to adopt measures with the view of accomplishing by private liberality what they fondly hoped to have seen attained by means of Royal Bounty; that even after certain amendments on the original Charter were made, no successful efforts were put forth by the Council of King's College to put it in operation until after the business of tuition in Queen's College had commenced, and also until after "the Upper Canada Academy" established under that title by the Wesleyan Methodist Church five years previously, had been incorporated under the name and style of "Victoria College" at Cobourg; so that whereas the summer of 1841 saw Upper Canada without a College at all, the summer of 1843 exhibited the same country with *three* Colleges; not the least extraordinary feature of this exhibition being, that the acting authorities of the publicly endowed University did not proceed to lay its foundation stone until after the two others were in actual operation; superficial observers being thus tempted to draw the one or the other of two conclusions, both equally erroneous,—either that a College is a very different thing from what most educated persons are accustomed to believe it, or that Western Canada, in less than two years had made such rapid advances in the desire of enjoying a Literary and Scientific Education as from having *none*, to have passed into the condition of having *three* Universities;—the historical fact all the while being, that if the publicly endowed University had, instead of being started last, been put in operation first, and on such safe and liberal principles as were set forth by the people of Canada, and also by the Imperial Government, after the true state of the Province had become known in England, the two Universities which were first in operation, would never, as Universities, have been thought of. From the moment when the three Colleges now in Upper Canada were in operation, it became inevitable that the public should regard them as *rival*, not really *needful* Institutions, and as the one is munificently endowed, and the other two are not, it is rendered certain that in consequence of privileges and rewards held out to Students by the publicly endowed College which it is impossible for privately established Colleges to offer, most of the very limited number of University Students in the country will be attracted to the place whence pecuniary and literary honors will be most likely to flow upon their present and future course; and finally, it will be seen, that so far as Queen's College is concerned, not only has that equitable share in the management of the affairs of King's College justly claimed by the Members of the Church of Scotland been denied and resisted, but also that what has repeatedly been the subject of the strongest representations by the Imperial Government, as well as of negociation with the Government of this country, and the acting authorities of King's College, has been unjustly withheld.

Viewing all which considerations, the Board of Trustees of Queen's College entertain very decidedly the conviction, which they have on many occasions and in many modes presented to Parliament, and to the Government, that the only effectual way of making King's College as extensively useful as it was meant to be, and at the same time of safely guarding the interests alike of Literature, Science and Religion, is to present inducements to the various Ecclesiastical Bodies in the Province who may chose to avail themselves of such inducements, to establish merely Theological Colleges, with a certain amount of representation to each in the Council of King's College; and, *upon this principle*, so to deal, with the question of grants of money from the funds of the University to the Theological Colleges which may be established as constituent parts of the University, as justice and equity demand. In other words, the Board believe, that the only safe way of settling this question is immediately to mark with Legislative authority a measure bearing the essential features of the Bill introduced during the last Session of Parliament.

Extracted from the Minutes of the Board of Trustees of Queen's College, by

(Signed,) J. WILLIAMSON,
Secretary.

(*Enclosure*

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(*Enclosure in No.* 8.)

(Copy.)

Resolution of the Board of Trustees of Queen's College, adopted 8th September, 1842.

Resolved,—That inasmuch as since the recent movement for the commencement of King's College, Toronto, doubts have been expressed to this Board from various quarters of the expediency of making Queen's College anything more than a Theological School, this Board feel themselves called on to adopt the following Resolutions: That they in common with the Presbyterian population of the Province, always entertained the conviction that it was most expedient that King's College with its ample public endowment should be in the proper sense, the University for the whole population without respect to the religious creed of the Students, and that they were led to take measures for founding and establishing a separate College, only when the prospect of the actual commencement of King's College, and the attainment by the Presbyterian population of their due influence in the administration of that College seemed to be indefinitely postponed; that, now when these circumstances are altered, inasmuch as measures are in progress for beginning the business of instruction in King's College, and a spirit of conciliation and liberality pervades the Councils of the Provincial Government, the Board feel themselves called on to declare, that they have no wish to appear to stand in an attitude of rivalry to the Institution, but rather to help it forward as far as they can, consistently with those interests which are committed to them by Royal Charter, and that they are ready to concur in any Legislative enactment that shall empower them to limit Queen's College to the department of Theological instruction, and that shall authorize the removal of said College to Toronto; provided, that the other powers and privileges conferred by the Charter shall not be infringed on, and provided further, that a fair and virtual influence shall be conceded to this Board and the Professors of Queen's College in the administration of King's College, and that all reasonable aid and facilities shall be afforded to this Board, for making the change herein contemplated.

And that this Board shall appoint Commissioners to communicate this Resolution to His Excellency the Governor General, and to take such other action respecting it, as they may see fit, the Board declaring that they do not in the mean time, either for themselves, or for any part of the Presbyterian population, forego any of the claims which they have on King's College, that on the other hand they will exert themselves to the utmost to obtain the endowment of a Theological Professorship from the funds of said College, for which the Government is in various ways pledged to the Presbyterian Church, and also to put Queen's College on the most effective footing according to the present scope of the Charter, as a general Literary and Philosophical as well as Theological Seminary.

Extracted from the Minutes of the Board of Trustees of Queen's College, by

(Signed,) J WILLIAMSON,
Secretary.

Kingston, 16th March, 1846.

No. 9.—*Letter from the Principal of Victoria College to the Private Secretary.*

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(Copy.)

Cobourg, 17th *March*, 1846.

Sir,

I have the honor to acknowledge the receipt of your letter of the 9th instant, stating the desire of His Excellency the Administrator of the Government to be furnished in a definite and official form with the views of the Governing Body of Victoria College,—on the present state of the Charter of the University of King's College as amended by the Statute of Upper Canada, 7th William IV., chapter 16.

From your communication it also appears, that His Excellency is desirous of ascertaining the views of each of the Upper Canada Colleges on the whole subject of the University Question which is now agitating the public mind.

As the members of the Board of Victoria College reside in various parts of the Province, it is not possible to call them together at this season of the year. In order, therefore, to comply with your request as far as practicable, I shall be under the necessity of adverting to the proceedings which the Board of Victoria College has at different times adopted on this subject, and then subjoin some remarks of my own.

The Board of Victoria College did not originate any agitation on this question; but its attention was formally called to it by the introduction of Mr. Baldwin's Bill into the Legislative Assembly in October, 1843.

On the 25th of that month a special meeting of the Board was called to consider that Bill. I will extract so much of the proceedings of the Board as have reference to the general question.

"The Chairman stated the object of the meeting. After which he read a copy of a Bill now before the Provincial Legislature to provide for the separate exercise of the Collegiate and University functions of the College established at the City of Toronto, in Upper Canada; for incorporating certain other Colleges and Collegiate Institutions of that division of the Province with the University; and for the more efficient establishment and satisfactory government of the same.

"The Board proceeded to consider the Bill, and after long and careful deliberation thereon, the following Resolutions were adopted, viz.:

"1*st. Resolved*,—That this Board has observed with the greatest satisfaction and thankfulness, the just and generous efforts of the Government to render the benefit of an University Education accessible to all classes of the inhabitants of this Province to the greatest possible extent, without reference to forms of religious faith; securing the equitable rights and privileges of all, without offence to the peculiar opinions of any; and recognizing the Inspired Volume as the basis of the whole system.

"*2nd. Resolved*,—That such were the Christian and patriotic objects of the amended Charter of the University of King's College, which by annulling a Sectarian test and supremacy, and placing that Institution in its management and professorships upon the broad ground of Inspiration of the Scriptures and the doctrine of the Trinity, clearly contemplated its operations upon that liberal and Christian foundation; but the noble and comprehensive objects of the Charter

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have been entirely defeated and abrogated, the sectarian Charter has been virtually restored by the partial and exclusive manner in which appointments to that Institution have been made, and its affairs managed,—apart from the misappropriation of large portions of its funds.

"3*rd. Resolved*,—That the University Bill appears to provide effectually against the abuses which have been practised under the general and indefinite provisions of the amended Charter, and for the future management of the University upon principles of justice and fairness to all parties, and under the control of persons identified with the Province, and interested in the efficient operations of the University, and in the judicious expenditure of its funds.

"4*th. Resolved*,—That viewing the general objects and provisions of the Bill in this light, we cordially concur in them, and give the Bill our warm approbation and support; although its present application to the Wesleyan Methodist Church, as a body, from circumstances peculiar to ourselves, deprives us of important rights and privileges that we enjoy, without conferring upon us any corresponding advantages; since all the resources which we have been able to obtain; both in this Country and in England, for the erection of College Buildings, have been expended in the erection of a commodious and expensive edifice, at too great a distance from the seat of the University to render any of its advantages available to the Scholars and Students of Victoria College.

"5*th. Resolved*,—That in view of the peculiar inconveniences and disadvantages to which the operations of the Bill must necessarily subject us, without its being in our power to enjoy the benefits of the University, we appeal to the just and enlightened consideration of the Government, to grant us such assistance as our peculiar circumstances suggest; and to aid us to the utmost of its power in making any arrangements which may be hereafter deemed expedient and advisable, to secure to the persons under our instruction the advantages of the University.

"6*th. Resolved*,—That while we concur in the general objects and provisions of "The University Bill," we beg to submit the following matters of detail, as appearing to require amendment or modification:

* * * * * * * * * * *

"4*th.* While the Inspiration of the Scriptures is recognized in the former part of the Bill, the sixty-fourth clause disallows the requirement of any religious qualification of any Professor, Lecturer, &c. We are not aware that the qualification required by the amended Charter, that every Professor or Teacher or other Officer, should profess his belief in the Inspiration of the Scriptures and the doctrine of the Trinity, has ever been objected to on the part of any considerable portion of the community,—on the contrary, be believe, it has given universal satisfaction; and, we should regret extremely to see that Christian provision excluded from the Charter of the University.

* * * * * * * * * * *

"8*th.* This Board begs furthermore to state, for the information of the Government, that Victoria College, from the terms of the subscriptions by which its Buildings have been erected, and the provisions of the Charter by which it has been incorporated, must necessarily continue to be, as it has heretofore been, a Literary Institution, embracing the English as well as Collegiate Departments of educational instruction, open to all classes of Students, without any Religious test; with the establishment of a Divinity Professorship upon its foundation."

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On the 8th of May, 1845, a meeting of the Board of Victoria College was held, when the Bill, introduced by the Honorable Mr. Attorney General Draper into the House of Assembly at its last Session was considered.

The following is the Minute of the proceedings of the Board on the subject:

"Took up the consideration of the University Bill now pending in the Legislature, and

"1. *Resolved*, That in view of our peculiar circumstances, the Board recommend the Conference to petition the Legislature to grant a sufficient and permanent endowment for Victoria College where it is now located.

"2. *Resolved*, That in the event of the foregoing not being obtained, the Board recommend that the proposed University Caput be so constituted, as to give each College incorporated in said University a fair share of representation in the Councils thereof."

Again, at another meeting of the Board held the 1st of last October, the subject was taken up and the following Resolution adopted:

"*Resolved*, That while the Board of Victoria College has no desire to embarrass the Government in the University measure, yet this Board deems it expedient that the operations of Victoria College be continued at Cobourg; and should it be impracticable to divide the University Endowment, for the support of separate Colleges, that arrangements be made to place Victoria College on terms equally favourable with all other Colleges in the University in the constitution of the Caput," &c., &c.

Such are the proceedings which the Board of Victoria College has at different times adopted on this question.

From these proceedings it will be seen:

1*st.* That the Board has not been disposed to dictate to the Government any particular view, as to the mode of disposing of the University question.

2*nd.* That the evils complained of in reference to the University of King's College, have been regarded by the Board of Victoria College (as expressed in the 2nd and 3rd Resolutions adopted in October, 1843,) as *practical* rather than *theoretical*—that the fault is not so much in the amended Charter as in the manner in which it has been administered.

Had the Members of King's College Council been so selected as to constitute a fair representation of the religious feelings of the country, and the Professors been appointed, and the services established in accordance with the obvious spirit of the amended Charter, probaby no dissatisfaction would have been created.

But public expectation having been disappointed in the manner in which the amended Charter has been carried out, and the funds of the University have been expended, the demand is made by many for another alteration in the Charter, with a view to correct past abuses and prevent the recurrence of them.

3*rd.* That while the Board of Victoria College has not been disposed to press upon the Government any one mode of settling this question, neither has it refused to sustain any relation to the Provincial University which might be required of Victoria College in common with other Colleges.

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There are, however, some circumstances which I cannot omit noticing in regard to the views of the Board and the case of Victoria College.

The first is, that the Buildings of Victoria College are situated at Cobourg. It cannot, therefore, derive any benefit to its pupils from its connexion with the University situated at Toronto. If its incorporation with the Toronto University be not accompanied with an increase of pecuniary aid, the change in its relations will be one of sacrifice and loss in every respect. Should the Board be remunerated for the Buildings so as to be able to erect a new establishment at Toronto, the case would be different.

Another circumstance requiring notice is, considering *where* Victoria College is situated, that the resources of the Wesleyan Body have been literally exhausted in erecting the Buildings (on which a debt still remains); that they have been erected by subscription for specific objects; that the Institution affords the only means of giving to a great portion of the youth of the Wesleyan Methodist Church a superior practical education; of furnishing facilities for the education of the sons of Wesleyan Ministers, and providing for the more thorough education and training of the Wesleyan Clergy; the Board have felt it imperative that the operations of the College should be continued.

They have not been ambitious as to the privilege of conferring Degrees in the Arts and Sciences; but they have been chiefly anxious to obtain the requisite endowment or assistance to enable them to accomplish these benevolent and patriotic objects for which the Institution was originally established.

Under the present circumstances of the Province, it is not possible that a University Education can be attained by the Clergy generally; or that more can be done in this respect than is now doing by the Lord Bishop of Toronto, aided by the Propagation Society, (at whose disposal a large portion of the proceeds of the Clergy Reserves has been placed) in the Episcopal Theological Institution at Cobourg, where young men are aided in procuring a good classical education, and are regularly instructed in the Science of Theology. This is what is sought to be done in respect to the candidates for the Wesleyan Ministry.

Again, the system of the Wesleyan Ministry rendering the frequent removals of the Ministers necessary, and their means of support being extremely limited, they can give their sons no other education than that which may be obtained in the Schools near which they are from time to time situated. It is not practicable under such circumstances for the Wesleyan Ministers to give their sons even a tolerable education, without some Institution which will be accessible to them upon reduced terms, and which will provide for the moral as well as intellectual education of their sons.

With a view to these high and benevolent interests, apart from the more general and popular objects of Victoria College, the Board have felt it their duty to insist upon its continued operations.

The case of the Wesleyan Body in connexion with Victoria College is simply this: the Wesleyan Body have made exertions beyond those of any other persuasion in Upper Canada, to improve the state of education among their Clergy and People; they did so with the expectation and assurance that their efforts would be suitably encouraged by the Government, and their lack of means be thus supplied. Large appropriations by Government have been made for many years to the Clergy of the Churches of England, Scotland, and Rome, while not a farthing has been granted to the Clergy of the Wesleyan Methodist Church, whose labours have been confessedly more extensive and more self-sacrificing than those of either of the other three persuasions above mentioned.

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The Wesleyan Conference and the Board of Victoria College on its behalf, have repeatedly submitted these facts to the consideration of the Government, and have entreated as some mitigation of the inequality of the treatment of the Wesleyan, and the three other leading religious persuasions in the Country, additional aid to Victoria College.

Up to the present time their representations and entreaties have been in vain; not a six-pence has been as yet allowed them from the settlement of the Clergy Reserve question. The only assistance obtained is the continuation of the pittance recommended by Lord Sydenham, in order to relieve the Institution from otherwise inextricable embarrassments. The continuation of this Grant has mitigated the pressure of the debts owing by the College, but has not been sufficient to enable the Board to employ a single additional Teacher though the Institution has been incorporated as a College, and the higher branches of collegiate instruction have been attempted to be given.

The dissatisfaction which this unequal and painful state of things was calculated to create among the Wesleyan Ministers and People, has been partially counteracted up to the present time by assurances and expectations that the Government would do them justice at least to some extent; as such has been the principle of policy avowed both by the Imperial and Provincial Governments.

But the moment the hope of such a result is extinguished, deep and universal dissatisfaction, increased by the bitterness of disappointment, will take possession of the minds of the Ministers and Congregations of the Wesleyan Methodist Church.

The number of our regular Ministers in Upper Canada exceeds 140, and from the number of their Congregations, and the period and extent of their labours, their circumstances and wishes on this question deserve, I submit, the most favourable consideration of the Government.

My present connexion with Victoria College is merely honorary; but I speak from a perfect knowledge of facts, which it is not in my power to change or modify, and which I have felt it my imperative duty to submit to the consideration of His Excellency in connexion with the settlement of the University Question.

I have the honor to be, &c., &c., &c.

(Signed,) EGERTON RYERSON.

J. M. Higginson, Esquire.
Private Secretary,
&c., &c., &c.

No. 10.—Letter from the Very Reverend Angus McDonell, College of Regiopolis.

(Copy.)

Montreal, *March* 24th, 1846.

Sir,

I have the honor to acknowledge your communication of the 9th instant, informing me as one of the Trustees of the College of Regiopolis, that you were

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commanded by His Excellency the Administrator of the Government to state to me his desire to be furnished in a definite and official form with the views of the Governing Body of the College of Regiopolis on the present state of the Charter of the University of King's College as amended by the Statute of Upper Canada, 7th William IV, chapter 16; and I take this opportunity of transmitting to you for and in behalf of the Corporation of the College of Regiopolis their views upon the subject, for the information of His Excellency.

The Corporation of the College of Regiopolis are averse, as a general rule, to any tampering or interference with private rights, and had the University of King's College been endowed with private instead of public property they would feel themselves bound both in honor and justice to make every exertion to manifest publicly their disapprobation of any step taken by the Legislature to interfere with the same; and even as matters stand at the present, and however much they individually disapprove of the manner in which, what they consider public property, and should have therefore been applied for the advantages of all the members of the community without reference to sect or denomination of Christians, has been misapplied, yet, as a body, they were determined not to have expressed any opinion upon the subject, and such would have been their conduct, had not His Excellency called upon them for an expression of their opinion upon the same.

However much the Members of the Corporation of the College of Regiopolis feel interested in the prosperity of the establishment with which they are connected, and however much they see the necessity of its being endowed by some permanent grant from the Provincial Legislature in order to place it upon a lasting and useful footing, they nevertheless take the liberty to state for the information of His Excellency, that they would much rather see the Institution endowed in some other way than to receive a portion of the property now vested in the Corporation of the University of King's College, however unwise the grant might have been in its origin.

The Members of the Corporation of the College of Regiopolis beg further leave to state for the information of His Excellency, that they are of opinion such an endowment can be made without infringing on the vested rights of any other Institution, and in a manner much more congenial with their own feelings and with those of the community to which they belong,—they mean, out of the unalienated Estates formerly possessed by the Order of the Society of Jesus, the proceeds of which can never be justly diverted from the ends which the donors had in view, that is, the Education of the Catholic Youth, and the spread of the Catholic Faith in Lower Canada.

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The Corporation of the College of Regiopolis are aware that in order to harmonize with the wants and wishes of the greater portion of the people of Upper Canada, for whose benefit the University of King's College was founded, many changes are still necessary to be made in the Charter of that Institution, but they are, on the other hand, also aware that there exists such a variety of opinions, some of them so illiberal and unreasonable, whereas others under the deceptive appearance of liberality would exclude from the Institution every species of Religious Instruction, and introduce instead thereof a perfect system of infidel teaching, that they find it difficult to determine what those changes should be.

The Corporation of the College of Regiopolis are not convinced that in order to procure for the youth of Upper Canada the blessings of a proper system of Education, a University is at all necessary, and more especially one endowed on the large scale on which that of King's College has been through the munificence of the Government. They are much inclined to believe with a renowned author that, "the reputation " of Universities is almost always shortlived, or else " it survives their merits; if they are richly endowed, " Professors become fat-witted, and never imagine that " the Arts and Sciences are any thing else but incomes. " If Universities slenderly endowed are rendered fa- " mous by the accidental occurrence of a few great " Teachers, the number of Scholars attracted by the " reputation of the place make the situation of a Pro- " fessor worth intriguing for. The learned pate is " not fond of ducking to the golden fool. He who " has the best talent for getting office has most " commonly the least for filling it; and men are made " Moral and Mathematical Teachers by the same trick " with which they are made Tide Waiters and Clerks " of the Customs".

Under the above convictions, the Corporation of the College of Regiopolis are of opinion that it would be much more beneficial for the community at large, if the Charter of the University of King's College were repealed: and the four Colleges already chartered, that is King's College, Toronto, Victoria College, Cobourg, Queen's College, Kingston, or wherever else the Trustees choose to erect it, the College of Regiopolis, Kingston, and a College of Law and Medicine to be erected somewhere in the Province, endowed out of the proceeds of the property now vested in the Trustees of the University of King's College.

I am, &c.

(Signed,) ANGUS McDONELL,
Vicar General.

J. M. Higginson, Esquire,
Civil Secretary,
&c. &c. &c.

Montreal:

PRINTED BY LOVELL & GIBSON.

ST. NICHOLAS STREET.

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DOCUMENTS

Respecting KING'S COLLEGE, laid before the Legislative Assembly by the Honorable Mr. Attorney General Draper, by Command of His Excellency the Governor General, on the 7th May, 1846.

No. 1.—Memorial of the Professor of Anatomy and Physiology.
No. 2.—Report of Committee on the Memorial of the Professor of Anatomy and Physiology.
No. 3.—Opinion of the Visitors of King's College.

No. 1.—Memorial of the Professor of Anatomy and Physiology.

To The Right Honorable SIR CHARLES THEOPHILUS METCALFE, Baronet, Chancellor of the University of King's College, &c. &c.

The Memorial of the undersigned, Professor of Anatomy and Physiology in the said University,

MOST RESPECTFULLY SHEWETH:

That from the time of the appointment of Your Excellency's Memoralist to a Professor's Chair, and to a seat in the Council of the said University, he has perceived with regret and alarm the system pursued of alienating the extensive Estates with which the Institution was originally endowed, and the conversion of the said Endowment into money, and above all the using the Capital proceeds of the alienations aforesaid to meet and bear current expenditure.

That it appears from the monthly returns made by the Bursar to the Council, that the Committee appointed for the sale of land, are proceeding with the alienation of the Estate to a very considerable extent,—and Your Excellency's Memorialist is therefore led to apprehend a continuance of this system, a system which he firmly believes to be destructive of the best and most permanent interests of the Institution, and which, however convenient it may be found for present purposes, will assuredly call forth public censure and reprobation hereafter. Your Excellency's Memorialist therefore respectfully addresses Your Excellency for a threefold purpose.

First.—To pray Your Excellency to interpose the authority vested in Your Excellency for the preservation of the Endowment of the College in its present shape—of land,—a species of property which, in the circumstances of this country, must in the lapse of time become vastly increased in value, and which in all countries has been found the most secure, and most available for the support of permanent Institutions of learning, and for the prevention by the most rigid rules of the use of any portion of the Capital Endowment of the said Institution in the current expenditure thereof.

Secondly.—That Your Excellency may understand the motives of Your Memoralist's opposition to the proceedings of the College Council, on questions of alienation of the Endowment and of expenditure, motives which are liable to be misunderstood, and still more liable to be misrepresented; so that the conduct of Your Excellency's Memoralist, which he feels to be disinterested, and to proceed from the purest sense of duty, and from zeal for the advancement of Science in Canada, may not be set down to any factious desire on his part to impede the majority of those with whom he is associated in the measures which they see fit to adopt in the management of the University affairs.

And, *Thirdly.*—Your Excellency's Memoralist makes this respectful representation, to the end that should the present system of alienation and waste continue to be pursued, that he, or those who may happen to be interested in the reputation he is desirous of maintaining and leaving behind him, may when the time comes when the consequences of the present course of the College Council shall be felt and reprobated, have the means of shewing that he, as a Member of the College Council, left no means in his power unused which might have a tendency to protect the College Endowment, and to preserve the same unimpaired to futurity.

Your Excellency's Memoralist therefore most humbly represents that the College Charter, while it ordains and grants that the Chancellor, President and Scholars, and their successors, shall be able and capable to have, take, receive, purchase, acquire, possess, hold, enjoy and maintain, to and for the use of the said College, any messuages, lands, tenements and hereditaments, and while the same Charter grants to the Council of the said College the power to make Statutes, Rules and Ordinances for the management of the Revenues and Property of the said College, the said Charter gives no express power to the said Council or to the Corporation of King's College to alienate the whole or any part of the landed Endowment; and Your Excellency's Memoralist humbly conceives that had it been in contemplation of the Crown, when the said Charter was granted, that the landed Endowment of the said College should be transmuted into money, or that the Capital arising from the transmutation thereof should be used for temporary or current purposes, some expression of such design would be apparent in the said Charter; and the absence of any such expression leads Your Excellency's Memorialist to the conclusion, that when His late Majesty King George the Fourth granted His Royal Charter for a seat of learning, which was to exist for all time thereafter, His Majesty intended that all the landed Endowment of the College should be retained in the same perpetuity. But if the Members of the present Corporation have and exercise the power of alienation of a part of the said landed Endowment, they or their successors may alienate the whole, and if present convenience be a sufficient argument for using the capital Endowment of the Institution now, the same inducement will be probably found sufficient at all times so long as the Endowment lasts. Your Excellency's Memoralist therefore most humbly represents to Your Excellency, not only that the alienation and use of the said Endowment in the manner represented is contrary to all principle or intention of perpetuity in the Institution, but it is also a most dangerous precedent to be set by the Council, who now act at what may be called the commencement of the operations of the University.

That Your Excellency's Memoralist from the consideration of the necessity of the preservation of landed Endowment for the purpose of giving permanency to Institutions for the promotion of learning and science,

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was led to enquiry as to the manner in which Endowments were preserved to Colleges in England, and he found that the same evil which he now complains of existed there, and that its recurrence was prevented by what Lawyers call the restraining Statutes of Queen Elizabeth. That the said Statutes being in their nature general and highly remedial, Your Excellency's Memorialist humbly conceives that they were introduced into this Province by the Provincial Statute which adopted the Law of England in Upper Canada in all matters of civil right.

The Statute 13, Elizabeth, chapter — is reputed by Lord Coke to extend to prevent the alienation of Collegiate Endowments as adjudged in the case of the Master and Fellows of Magdalen College in Cambridge. In that case the College sought to alienate a portion of its Endowment by the device of conveying the same to the Queen, for the purpose of a grant from Her Majesty to a stranger.

And it was unanimously resolved by the Court upon solemn argument, that the said Statute 13, Elizabeth, extended to restrain the Master and Fellows of the said College from conveying parcel of the possessions of the said College to the Queen, although the Queen was not named in the Statute, and the reasons given by the learned sages of the Law who adjudged that case for extending the construction of the Act so as to make it embrace conveyance to the Queen's Majesty, though not specially named, are, in the mind of Your Excellency's Memorialist, conclusive against any narrowness of construction of the same Act, which would prevent its operation in a Province where the English Law has been generally adopted.

For may it please Your Excellency, if the Court rightly and justly could in the case of Magdalen College say, "God "forbid that by any construction of the Queen who made "the Act should be exempted out of this Act 13, "Elizabeth, which provides necessary and profitable "remedy for the maintenance of religion, the advan- "cement of good literature, and the relief of the poor;" It may well be said in this Province, God forbid that by any construction the same Act should be held not to extend to this Province, where the same good is to be accomplished by its provisions, and the same dilapidations prevented by its enforcement as in the country from which our Law was taken.

If, may it please Your Excellency, there was anything in the circumstances of this Province which made it inconvenient that the whole landed Endowment of King's College should be preserved in that shape, it is, as Your Memorialist humbly conceives, but reasonable to suppose, that some mention would have been made of the inconvenience in the College Charter; and instead of an Endowment in land, an Endowment in money, or the proceeds of the sale of the land would have been granted; or if any such circumstances are supposed to exist now the Legislature is competent to provide a remedy by permitting the alienation of a limited portion of the landed Endowment; but it appears to Your Memorialist that nothing short of the clearest case of incompatibility with the circumstances and general Institutions of the Province, of any Institution of learning being supported in the whole or in part by income arising from land, could authorize the Corporation of King's College of its own head to abrogate the Statute 13, Elizabeth; for, may it please Your Excellency, if it be proper that any portion of the landed Endowment of the College should be preserved, that Statute surely applies to that portion; and if it apply to that portion of the Endowment which should be preserved, that portion comes within the reason and remedy of the Statute; and as all English laws in force in England at the time of the adoption of English Law in Upper Canada, the reason and remedy of which are applicable to circumstances and things existing in the Province, are law in the Province, and as it is not competent to individuals or bodies public or private to dispense with law, or to limit its operation according to their judgment, it appears to Your Excellency's Memorialist to follow incontrovertibly, that the Statute 13, Elizabeth, is in force in Upper Canada as in England, and that the Corporation of King's College has no more authority to limit its operation than the Master and Fellows of any College in the English Universities.

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Influenced by these considerations Your Excellency's Memorialist has taken occasion to bring the legal question of alienation and the mode thereof, under the notice of the College Council, and on the 24th January last he submitted a motion (*vide* Appendix A No. 1,) to the Council to the effect, that if the system of alienation were to proceed, it should at least do so under the advice of eminent professional men. Knowing that so many individuals of acknowledged and eminent learning and talents had been of the College Council when alienations of the Endowment were permitted, Your Excellency's Memorialist at one time supposed that the legal question had been fully considered, and that sales of the land might legally be made at the full value of the property, and the proceeds thereof reinvested; and Your Excellency's Memorialist was induced from the same fact to suppose that such alienation was known to consist with the intentions of the Sovereign in granting the Endowment; but upon referring carefully to the archives of the Institution, Your Excellency's Memorialist cannot find that the legal question has ever been directly considered, and so far from any intention appearing on the part of the Home Government to permit such alienation, Your Excellency's Memorialist finds that, for the purpose of giving the College an immediate income, the Government had substituted Crown Lands under lease, for a portion of the Wild Lands once intended as the Endowment. This income was at the time of this concession supposed to be one thousand pounds per annum, and to be progressively increasing. And in addition to this, and as it were for the purpose of shewing the intention of Government that no portion of the estate should be alienated, the University was authorized to take from the proceeds of lands sold to the Canada Company one thousand pounds per annum, which latter sum for sixteen years was intended for the erection of the requisite Buildings.

Your Excellency's Memorialist found on examination of the archives of the College, that although the custom of selling the lands prevailed almost from the very foundation of the Institution, and has continued to prevail ever since to a greater or less extent, although that the composition of the Council has constantly varied, yet whenever the Council has considered the subject on its being formally brought under their notice, the alienation of the Estate by sale has invariably been stopped, but the custom appears to have again continually crept in apparently when members were off their guard, and sometimes when there was not even a *quorum* of the Council present. This fact will appear on a reference to the Journals of the College Council, and the Journals will likewise shew, that whatever difference of opinion prevailed in the Council relative to the propriety of selling the land, and funding the Endowment, none of the members seem to have contemplated the appropriation of any portion of the principal to meet current expenses.

During the administration of Sir Charles Bagot in 1842, the custom of selling seems to have been almost abandoned, and the attention of the Council to have been laudably directed to providing ways and means for erecting the necessary buildings without trenching upon the Endowment, and to increasing the annual income so as to enable the University to go into immediate and efficient operation. The Finance Committee made a Report, and the Council passed two resolutions in February and March, 1843, on the subject, (*vide* Appendix No. 2,) yet notwithstanding these facts, and although the Council had for a considerable time abandoned the idea of selling the Endowment, yet afterwards during the time when there was no College Council in existence, in the interval prior to the formation of the present Council, sales of the University lands were effected upon a very extensive scale, and the very first act which the present Council was called upon to perform was the sanctioning the alienation of £6,000 of Government Debentures bearing six per cent, per annum, interest.

This last measure was urged upon the new Council before its members had an opportunity of becoming

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acquainted either with the acts or views of their predecessors, but the vote of Your Excellency's Memorialist is recorded as dissentient on that occasion.

Your Excellency's Memorialist further humbly submits, that even if it were taken for granted that the College Council has the power of alienating the Endowment of the Corporation, this can only be effected by the means pointed out in the Charter for the management of the College property, that is to say, in obedience to By-laws regularly proposed and passed in that behalf; for it is of all things the most absurd to suppose, that the Charter required property to be managed under the direction of Statutes emanating in the first instance from the Chancellor, and at the same time to imagine that the same property might be alienated altogether with less formality and less deliberation.

Had the provisions of the Charter, if they can be held to authorize alienation, been adhered to in times past, Your Excellency's Memorialist believes the Endowment would now be in a more flourishing condition, the Estate would not then have been at the immediate disposal of a body continually changing as to its members and liable to be called upon to pass hasty resolutions, authorizing sales or confirming sales made without authority, laws could scarcely have been passed without a review upon each occasion of the state of the Endowment or without the adoption of deliberate plans for the future, whereas by means of continual sales the property of the College may become seriously infringed upon, without any of the parties concerned being aware of the extent of the injury until it would be too late for remedy.

Your Excellency's Memorialist is by no means desirous that the sales made under the authority of the College Council hitherto, should be avoided, but he desires most seriously to raise the question of their legality, that purchasers may be confirmed in their rights by the only legal means, namely legislative enactment, which can hardly take place without some statutory definition, and limitation of the power of the Corporation, to alienate and destroy the Endowment upon which the useful existence of the Institution depends. The College was erected not for the sake of those who have the direction of its affairs; and the public, which is the party really interested, never could tolerate the unlimited exercise of the destructive power of alienation assumed, and, as Your Excellency's Memorialist believes, usurped by the College Council. Dilapidated and reduced as the Endowment is, enough may yet remain to sustain the Institution; and should this fortunately prove to be the case, former waste and reduction for temporary purposes may be forgotten; but Your Excellency's Memorialist humbly conceives, that the danger of the consequences of reduction of the Endowment has now become imminent, and that no arguments of convenience or expediency will justify its being further incurred.

The present annual income of the University if properly managed is, in the opinion of Your Excellency's Memorialist, ample to enable the country to derive from the Institution all the substantial and practical advantages which in its present circumstances it is capable of deriving from a seat of learning and science, but will not afford the sacrifice of any portion of it, either to show or useless forms. That income being derived from land it must increase with the growth of the Province in population and resources. If, however, the landed Endowment should be alienated, and the proceeds reinvested in money securities, the least that can happen is, that the income will be fixed, while there is a danger by no means remote of its being materially reduced by the introduction of monied capital. In short, every circumstance of improvement in the country which can be looked for, will tend to lessen the income from an Endowment in money, and to increase the yearly profits derivable from the land.

It is but reasonable to suppose that lands which possess the greatest intrinsic value usually are sold first. The accuracy of this presumption will be manifest on a comparision of the average prices received for lands in the years 1843 and 1844, respectively, where a decrease in the value of land to the amount of 2s. per acre, appears in the latter year as compared with the former. The portion of the College Endowment which has been sold would therefore appear to be in proportion the most valuable, and the portion which remains comparatively the least available. The Endowment was made when little was known of the lands intended to be conceded, and it is but too probable that out of the remains of 290,000 acres of land a considerable portion will be altogether valueless. There is every reason to believe that such will be found to be the case, and should the College Council as proposed, proceed to alienate 50,000 acres more of the saleable land, fancying that 100,000 acres would remain as a source of available income, it is certain that an error will have been committed which no time or events can remedy.

The system of alienation at present pursued appears to Your Excellency's Memorialist most indiscreet and improvident. In the early settlement of the Province the Crown Reserves were leased almost at nominal rents, great ulterior advantages being looked forward to at the termination of the leases. Such was the nature of the property placed in the hands of the Corporation of King's College in exchange for the wild unoccupied lands originally intended to be conceded, although for nearly twelve months Your Excellency's Memorialist, as the Journals will shew, has sought information in vain as to the number of leased lots so granted; to these leased lots are to be added the lots which the College Council in pursuance of the same leasing system, granted upon lease, so that by the returns furnished by the Bursar in 1843, they are left in possession of only 54,780 acres out of 290,000, and the sales have been effected out of these leased lots, at a price in many instances scarcely exceeding that which the College placed upon its wild lands. When Your Excellency's Memorialist remonstrated against this course of proceeding he was met by the Bursar with the statement that the College Council were pledged so to act,—a statement for which Your Excellency's Memorialist can find no foundation, and of which the late Council of King's College appear to have entertained no idea.

It appears to Your Excellency's Memorialist that there is no necessity to alienate any portion of the Endowment for the purposes of erecting the University Buildings. The arrears of interest and rents, which are legitimately applicable for this purpose, according to the returns made in 1843, amount to £34,798. Sir Charles Bagot was of opinion that the University Buildings should be erected with the proceeds of these arrears. The Bursar in his returns to Parliament in 1842, proposes to give time to the persons indebted, so as to divide the claims upon them into annual instalments, for a space not exceeding five years. How far this proposition has been carried into effect Your Excellency's Memorialist does not know. The amount of the sum in arrear remains however unchanged in the returns of 1842 and 1843, and notwithstanding that the College income is said to be indebted to this sum in the amount of £1250 per annum, it still remains dead capital.

Your Excellency's Memorialist may further add that the Sub-Committee of the College Council to whom is entrusted the sale of College Lands, are gentlemen inexperienced, and wholly unacquainted with the value of lands in this country, and consequently in no respect qualified to fulfil satisfactorily the important duty required of them, if such a duty can be delegated to any Committee by a Resolution of the College Council.

Your Excellency's Memorialist trusts that he has laid before Your Excellency sufficient grounds for Your Excellency's interference; and to shew Your Excellency that his opposition to the measures of the Council has been in no respect factious and unreasonable.

It only remains for Your Excellency's Memorialist humbly to pray Your Excellency to enquire into the legality of the proceedings of the College Council in the alienation of the landed Endowment, in the transmutation

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of the same into money securities, and in the use of the capital Endowment or any part thereof, in payment of or in advance for current expenses.

And if Your Excellency should be advised that such alienation, transmutation and application may legally be made without Legislative authority, to pray Your Excellency that the same may take place under the sanction of College Statutes, in which the powers to be exercised and the extent of the property to be affected by them shall be strictly limited and defined.

And if Your Excellency should think fit to propose the sale of any portion of the landed Endowment of the College or the use of any of its capital, that the same may not be used to meet current expenses, but that the latter may be limited and reduced as a matter of actual necessity, instead of the expenditure being considered of necessity to the injury of the Endowment.

With the view of insuring this object Your Excellency's Memorialist moved in the College Council an amendment to the Statutes lately transmitted to Your Excellency respecting the salaries of the Officers, to the effect that these salaries should be paid out of the annual income. This amendment was approved of, and it was agreed that Your Excellency's attention should be called to it in the address lately transmitted to Your Excellency, recommending some trifling additions to the College Statutes. When informed by the President and Bursar that the income would not admit of any additional expenditure, Your Memorialist agreed to the non-increase of the salary of Professor Sullivan, although at the time Your Memorialist expressed and considered that there was not in the establisment an officer so badly remunerated for his services, an opinion which Your Memorialist entertained in common with almost every Member of the Medical Faculty, and upon the same ground Your Excellency's Memorialist opposed an additional allowance to Dr. Beaven.

Your Excellency's Memorialist is aware that on the occasion when the question arose relative to the payment of the Professors' salaries in sterling money of Great Britain, his vote on that occasion exposes him to the charge of inconsisteney, and of desiring to increase instead of to lessen expenditure; but Your Excellency's Memorialist had then in view to move a Resolution which would have had the effect of opening the whole question regarding salaries, so that the same might have been placed on a scale in accordance with the actual income of the Institution. Your Excellency's Memorialist had not then, nor has he now, any desire to increase his own salary,—though in the first instance he considered himself entitled to the amount promised him, and in consideration of which he had given up his private practice; and he could not see the justice of reducing the salaries of Professors who were called on to discharge the greatest amount of duty, in order to raise to an equality the salaries of others who were not expected to perform duties to half the amount. But Your Excellency's Memorialist makes no complaint as to himself, his salary being as high as the present income of the College will admit of.

Your Excellency's Memorialist had resolved upon addressing Your Excellency on these subjects previously to the arrival of Your Excellency's late Minute to the College Council, and finding that Your Excellency required information touching some of the subjects to which he was about inviting Your Excellency's attention, he thought it right to inform the Council that he was then preparing a Memorial to Your Excellency respecting matters connected with the University. Your Excellency's Memorialist took this course, fearing that otherwise he might be exposed to unpleasant remarks.

The Bursar having now prepared a statement of the affairs of the Institution by way of answer to Your Excellency's enquiry respecting the protest entered by Your Excellency's Memorialist, Your Memorialist takes leave to append hereto abstracts of the Bursar's returns for the years 1843 and 1844, (*vide* Appendix B.) with a few observations relative to the various items, from which Your Excellency will observe that although the sources of available income have been materially diminished during the last year, the income itself as stated by the Bursar remains the same in both years.

Your Memorialist is at a loss to understand upon what other basis the Bursar should have predicted the income for 1845 than upon the sources specified in his returns, and as the income in each year must bear an exact proportion to the amount of the Endowment, Your Memorialist most humbly apprehends that to exhibit a present income on a diminished Endowment equal to that which was predicted on the larger Endowment of former years, can only be done by trenching upon the capital of the Institution, a system which must ultimately terminate in its ruin.

For these reasons and knowing of no new source of income available to the College, Your Excellency's Memorialist hopes and prays that Your Excellency will take the statement of Your Excellency's Memorialist into consideration, and adopt such measures as will restrain the expenditure of the University within its actual income, let the same be large or small, and as will preserve to futurity what remains of the once munificent Endowments intended to establish and perpetuate a University for the advancement of Learning and Science in Upper Canada.

And Your Excellency's Memorialist, as in duty bound, will ever pray, &c.

(Signed) Wm. C. GWYNNE.

February 13th, 1845.

APPENDIX A. No. 1.

Resolved, That the opinion of the Attorney and Solicitor be requested on the following points: First. Whether the sales of land (the property of King's College) which have hitherto been made, are valid, the said sales having in most instances been effected by a mere Resolution of the Council and not by Statute emanating from the Chancellor, as the Charter appears to require. Secondly. Whether the Council of King's College is not altogether deprived of the power of alienating the real estate of the University by sale, by what are called the restraining Statutes of Elizabeth?

This Resolution was proposed by Your Memorialist at a meeting of the Council held on Friday, 24th January, 1845, but does not appear on the Minutes of that date in consequence of its not having been seconded.

No. 2.

Extracts from the proceedings of Meetings of the College Council held in February, 1843, and in the month of March of the same year.

February, 1843.

PRESENT:

The Lord Bishop.
The Vice Chancellor.
Dr. McCaul.
Mr. Allan.
J. S. Macaulay.
L. P. Sherwood.
H. G. Grassett.

The Council resolved that the following scale of rents shall henceforth be observed in granting original Leases for full lots of 200 acres of College Lands, and that on renewal Leases the same scale shall be applied in addition to the rent existing at the termination of the old Lease.

First seven years,	£ 5	per annum.
Second do. do.	10	do. do.
Third do. do.	15	do. do.

March 7th, 1843.

PRESENT:

Lord Bishop.
Mr. Small.
Dr. McCaul.
J. S. Macaulay.
L. P. Sherwood.
H. G. Grassett.
Dr. Widmer.

In reference to the scale of rents established by the 13th Minute of the last meeting, it was resolved that in cases where a lot is divided into half lots, the terms shall be for each half lot as follows:

First seven years,	£3	per annum.
Second do. do.	6	do. do.
Third do. do.	9	do. do.

APPENDIX B.

STATEMENT shewing a diminution of that portion of the Endowment upon which the Income of the University is predicted from the Returns furnished by the Bursar to the Land Committee of the College Council, in February, 1843, and to the Chancellor and House of Assembly, in January, 1845.

	ENDOWMENT IN 1843.			ENDOWMENT IN 1845.			ESTIMATED INCOME FOR 1843.			ESTIMATED INCOME FOR 1845.		
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
Amount invested in Debentures, Bank Stock, Mortgages,.....	42,819	6	9	44,755	17	0½	2,511	13	2	2,643	2	0
Rent Roll, estimated at, per annum.....	.....	.....	.....	.....	.....	.....	1,500	0	0	1,500	0	0
Arrears of Rents, (estimated in 1842),.....	16,798	0	6	16,000	0	0	500	0	0	100	0	0
Outstanding purchase money,.....	67,649	10	0	67,491	0	0	3,900	0	0	3,900	0	0
Interest on purchase money,.....	18,000	0	0	16,552	0	0	750	0	0	700	0	0
Arrears of Upper Canada College,.....	6,402	0	0	4,000	0	0	100	0	0	100	0	0
Dues of ditto, ...	.....	.....	.....	.....	.....	.....	1,125	0	0	1,350	0	0
Dues of University Students, say 30 at £27 10s. each,.....	.....	.....	.....	.....	.....	.....	740	0	0	800	0	0
* Parliamentary grant,.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1,111	2	2
£	.....	.....	.....	.....	.....	.....	11,126	13	2	12,204	4	2

	£	s.	d.
Capital invested, increased,.....	1,936	10	3½
The Rent Roll remains the same in both years, although from the Returns it appears that the Leased Lands are diminished to the extent of 6,710 acres.			
The Income in 1845 is barely the Interest of £1,700, the diminution of Capital, is.....	798	0	0
No credit has been apparently given to the Proceeds of Land sold in 1844, amounting to £6,335, while the Capital is diminished by	158	18	1
Capital diminished by.....	1,448	0	0
Capital diminished by.....	2,402	0	0
£	4,806	18	1
Deduct increase as above,.....	1,936	10	3½
Decrease,.....	2,870	7	9½
Value returned of Leased Land, sold in 1844,.....	6,335	0	0
Total decrease of Capital, since 1843,..... £	9,205	7	9½

H

* NOTE:—This grant was supposed in 1843 to be too precarious to be calculated upon. In 1845, it is relied on as Income.

STATE of the ENDOWMENT in the years 1843 and 1844.

	ON LEASE.	UNOCCUPIED.	TOTAL IN 1843.	ON LEASE.	UNOCCUPIED.	TOTAL IN 1845.
King' College,.....	89,759	17,816	107,575	84,934	18,851	103,775
Upper Canada College,.....	5,816	36,980½	42,796½	3,931	38,573½	42,504½
	95,575	54,796½	150,371½	88,865	57,424½	146,279½

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No. 2.—Report of Committee on the preceding Memorial.

(Copy.)

The Committee to whom Professor Gwynne's Memorial to the Chancellor (bearing date February 13th, 1845,) was referred, report that they have investigated with much care the objects which the Memorialist brings under the attention of His Excellency, in that document. The principal are the alienation of the Estate, and the conversion of the Endowment into money,—and the use which it is asserted has been made of the capital proceeds to meet and bear current expenditure.

1.—*Of the alienation of the Estate.*

The grounds on which the Memorialist founds his surmise that the College Council does not possess the power of selling the property of the Corporation, are these : (*a*). The absence of any expression in the Charter giving the power of alienation. (*b*). The applicability of the restraining Statutes of Elizabeth to the Institutions of this Province.

(*a*) The absence of any expression in the Charter giving the power of alienation.

Of the land which has been or is in the hands of the Corporation, 225,944 acres were conveyed by patent as the Endowment of the University, and about 66,000 were conveyed in trust for Upper Canada College.

With regard to the latter of these, there can be no question as to the power of selling, for it is expressly stated that the land was conveyed in trust to be sold for the payment of the sums advanced by the University for the support of that Institution.

The only point then, about which a question can be raised is, whether the Council have the power of alienating by sale the 225,944 acres, which formed the Endowment of the University. In order that a correct opinion may be formed on this subject, it appears necessary to take a brief view of the circumstances under which the Endowment was granted.

In a Despatch from His Excellency Sir Peregrine Maitland to Lord Bathurst, (dated December 19th 1825), it is suggested, that an exchange should be made of those lands available for the Endowment of a University, "from "that portion of the Crown Reserves which remains to the "Government,"—and the reason of this suggestion is subjoined in the following words: "as being under lease, the "latter could be almost immediately disposed of at an "average price of not less than 10s. per acre. There are "about 200,000 acres of Crown Reserves at present occu- "pied, and a sum would thus be produced that would admit "of the immediate establishment of a University on a "scale that would render it effective."

It appears then from the Lieutenant Governor's Despatch suggesting the measure, which resulted in the Endowment of King's College, that the inducement for giving the Crown Reserves in lieu of the lands to which the University was entitled, was, the facility with which these Reserves might be sold.

In a Report also by the present Lord Bishop of Toronto, (bearing date March 10th, 1846,) the sale of the lands to be received in exchange is specially noticed as the principal feature which recommended the exchange.

On the 15th March, 1827, the Charter was issued,—and on the 31st of that month Lord Bathurst authorizes Sir P. Maitland "to exchange such Crown Reserves, as have "not been made over to the Canada Land Company, for an "equal portion of the lands set apart for the purposes of "education and foundation of a University, as suggested "in your Despatch of December, 19th, 1825, and more fully "detailed in Dr. Strachan's Report of the 10th March, "1826, and," the Despatch continues, "you will proceed "to endow King's College with the said Crown Reserves, "with as little delay as possible." Accordingly, on the 3rd January, 1828, the patent was issued whereby the portion of the Crown Reserves was conveyed to the Corporation as the Endowment of the University.

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In that instrument, although a similar formula to that in the Charter is adopted, whereby the Corporation are authorized "to have, take, receive, purchase, acquire, hold, "possess, enjoy and maintain, the word "sell" being omitted, yet the power of selling is clearly recognized, for a provision is made, "if the lands should come into pos- "session and tenure of any person whomsoever either "by virtue of any deed of sale," &c.

In one portion of the land thus transferred, (the township of Wilmot) the price for which it was to be sold per acre by the Corporation was fixed by the Government.

Nor did the Council on receiving the lands given in exchange, at all doubt their power to sell, for in February, 1828, public notice was given by their authority, that they would either renew the leases or sell, as might appear expedient to them or to the lessees. And at their fourth meeting in May, they fixed their minimum price at twenty shillings per acre, and directed the advertizement of all their lands in the Home District for sale, and the announcement that those in the other Districts would be offered for sale as soon as the necessary arrangements could be completed.

From that time up to the present period this power has been exercised, nor until recently has any objection to it been ever advanced by any Member of the Council, although the highest legal authorities in the Province have been amongst its members, and the subject has been more than once a topic of conversation during their sittings.

The Committee are of opinion, then, that the objection of the Memorialist, founded on the omission of the words "to sell," or some such equivalent terms in the Charter, is not to be entertained as valid, inasmuch as it appears that the Lieutenant Governor, when recommending the present grant as more desirable than the original appropriation, stated as its principal advantage, that it could be immediately sold ; that the Bishop of Toronto in his Report also contemplated the alienation of these lands ; that the Secretary of State, after the Charter had been granted, authorized the exchange as recommended by the Lieutenant Governor and Bishop ; that the Deed of Endowment expressly provides for the case of the lands being alienated by sale ; that the lands appear to have been accepted under the impression that they might be sold ; and the Council proceeded forthwith, after the issue of the Deed of Endowment, to offer them for sale, and have continued since that period to pursue that mode of alienation as appeared to them expedient.

(*b*) The applicability of the restraining Statutes of Elizabeth to the Institutions of the Province.

In considering this argument, the Committee will not enter into the purely legal question, whether the Statutes referred to are or are not in force in the Province, under the authority of the Provincial Statute, whereby the Law of England was adopted in matters of civil right. They will merely observe that the applicability of all Imperial Statutes cannot be necessarily inferred from the existence of that Provincial Statute ; of this, however, they are certain that these Statutes of Elizabeth have not been acted upon ; and they feel persuaded, that such restrictions are wholly unsuitable to the circumstances of an Endowment, such as that of the University, situated in a country where there is so great facility of obtaining the fee simple of land,—where rents are necessarily so low,—where leases are seldom taken, (except in particular localities,) unless with the prospect of purchasing, and where it is most desirable to give every encouragement to settlers to remain.

A moment's consideration of the result which must have followed inability to sell, will shew that such restraint would have been most highly injurious.

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The rental of the leased lands when transferred to the University, was estimated at about £1,000 per annum. It appears highly improbable that even that small income could have been collected; and this is strongly supported by the fact of the present large accumulation of arrears of rent. In many cases also there was an engagement to renew, and of course until these renewals expired, the annual revenue must have remained very low. The greater part of the lands which were not leased would most probably have continued unoccupied to the present day, for the applicants would either have withdrawn their claims on finding that they could not obtain the fee simple and secure their improvements, or, if they accepted a lease, would merely have used it for the purpose of stripping the land of timber; Upper Canada College could not have been built or supported; the site of the University could not have been purchased or improved, and the opening of the Institution must have been postponed to a period indefinitely remote; a great part of the property would be lying unoccupied, and most probably plundered of the timber; a considerable portion of the small income withdrawn from the service of the Institution for the payment of the Land Tax; the lease-holders dissatisfied that they were debarred the privilege, which the settler most highly values, of securing his improvements by purchase for his family, —and the whole community discontented that the wild lands of the Institution were stopping the progress of improvement, whilst the objects for which the Endowment was granted were wholly neglected.

The Committee cannot dismiss this part of the subject without expressing their surprise that the Memorialist should not have supported his opinion relative to the applicability of the Statutes referred to, by citing the portions of those Statutes on which his argument was founded, and producing the opinions of professional men qualified to pronounce in such a matter. Nor can they forbear adding that the visitors are the proper authorities for deciding questions of this nature; and that according to the usage or laws of every University with which they are acquainted, such subjects never have been nor are referred to the Chancellor.

In this University such a course is peculiarly objectionable, inasmuch as by the Charter the highest Officer is a member of the Council, and thus participates in the responsibility for the acts of that body; hence it has been the practice of the Council to submit a copy of the Minutes of each meeting for the information of His Excellency, when he has not been present.

But the Memorialist founds a collateral proof "of the "intention of the Government that no portion of the "Estate should be alienated," on the fact that the University was authorized "to take from the proceeds of lands "sold to the Canada Company £1,000 per annum, which "latter sum for sixteen years was intended for the erec- "tion of the requisite buildings." The Memorialist seems to forget that if the grant of that annual payment be evidence of the intention of the Government, that no portion of the Estate should be alienated, the withholding of it after little more than a fourth of the period for which it was promised is equally conclusive of their opinion that the further sum required for Buildings should be taken from the University funds; nor can it be believed that it would have been expected by any one who had the least acquaintance with the state of the Endowment, that the annual income derivable from the rents would have been sufficient at once for the current expenses of the Institution, and for the erection of the necessary Buildings.

The Memorialist also advances in confirmation of his views, "that whenever the Council has considered the "subject (*scil.* alienation,) on its being formally brought "under their notice, the alienation of the Estate by sale "has invariably been stopped, but the custom appears to "have again continually crept in, apparently when mem- "bers were off their guard, and sometimes when there "was not even a *quorum* of the Council present."

The Committee are not aware that the Council have ever stopped the practice of selling the lands of the University through any doubt of their right to alienate the Estate in that way; nor is there any record on the Minutes of the Council since its first meeting, which would warrant such an opinion. They certainly have at different times for various reasons suspended both selling and leasing, and the question of retaining a considerable portion of the Estate as a permanent Endowment has been more than once brought forward. The majority of the Council, however, never declared their concurrence in this until April, 1844, when a recommendation of the Land and Building Committees to the effect, "that 100,000 acres should be reserved as the per- "petual Endowment of the University," was carried.

The Committee are of opinion that the words of the Memorialist, "whenever the Council has considered "the subject on its being formally brought under their "notice, the alienation of the Estate by sale has invariably "been stopped," do not give a correct view of the action of the Council or their motives on the occasions to which reference is made.

In July, 1839, the Resolution passed by the Council on the subject was in these words, "that until a new "valuation of the lands belonging to the University be "made, no more applications to lease or purchase be "entertained."

In December, 1839, the President "suggested the "propriety of the Council taking into consideration, "whether some limitation should not be placed to the "alienation by sale of the University Lands,"—but the subject was deferred.

In January, 1840, the subject was again noticed, and again deferred.

In February, 1840, "the Lord Bishop of Toronto mo- "ved that 100,000 acres of land be retained as the perma- "nent Endowment of King's College, and 25,000 acres of "land be retained as the permanent Endowment of Upper "Canada College; the said lands to be placed under "lease of 21 years, and that at the expiration of each lease, "the same be renewed with such rise of rent as may be "determined by Arbitrators." After some discussion this motion was withdrawn, and the following motion was substituted, and was assented to by the Council; "that "before concluding upon the propriety of permanently re- "taining any considerable part of the estates belonging to "the University and Upper Canada College, the Council "are desirous of obtaining correct information on the "value of the lands held, and of the returns stipulated "for, and actually received under leases already grant- "ed, which information it is understood is in course of "being obtained; in the meantime all further grants of "leases or sales of land to be suspended." The reason of the withdrawal of this motion, although not recorded on the Minutes, was the decided objection expressed by the Chancellor, who was then present, to keeping a landed Endowment.

The next occasion on which the Committee find that the subject is noticed on the Minutes, was in January, 1841, when the consideration of applications to purchase to the extent of 5,400 acres was deferred, "the Council "proposing at their next meeting to take into considera- "tion whether it may not be advisable to adopt some new "regulations on the subject of alienating the College "property."

In March, 1842, the Report of the Finance Committee was presented, in which the principle of alienation by sale is recommended, even to the extent of all the lands then leased. This Report was adopted by the Council.

The Committee are not aware of any further action on or notice of the subject by the Council, until April, 1844, the particulars of which have already been given.

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The Committee cannot discover any grounds for the opinion expressed by the Memorialist, that "the custom "appears to have crept in apparently when the members "were off their guard," nor is there anything which they can find, to justify the assertion that the custom crept in "when there was not even a *quorum* of the "Council present." Lands have been sold under such circumstances, undoubtedly, for power was given (in order to expedite and facilitate business) on more than one occasion, to a number of members less than five, to decide on the applications of intending purchasers; but, the practice of selling, when stopped, has never been resumed but under the authority of the Council.

The Committee are also unable to discover the authority on which the Memorialist has stated that, "during "the administration of Sir Charles Bagot, 1842, the "custom of selling seems to have been almost abandon-"ed;" for it appears from the Bursar's returns for 1845, that the number of acres sold in the year 1842, exceeds the average of the seventeen years during which the Institution has existed. The average yearly sale of the lands of the University has been about 7,200 acres, whilst the amount sold in 1842, is 7,504. In fact, it was during this administration, in 1842, that the Council adopted the principle (as developed in the Report of the Finance Committee presented on March 15th, of that year) of borrowing from incoming capital for current expenses, and paying it back with interest, mainly by means of alienating all the leased lands. From that time the necessity of selling the Estate was fully recognized and acted on; and although some members were still desirous of retaining some of the leased leads, the practice seems to have been uniformly persevered in until the beginning of 1844, when a Committee was appointed to report on the state of the Endowment. In April of that year they submitted a recommendation to the Council on the subject, and the result of the discussion thereon was the adoption of a resolution to resume the sale of lands.

The Memorialist further advances on this subject the following remark: "The Finance Committee made a "Report, and the Council passed two Resolutions in Fe-"bruary and March, 1843, yet, notwithstanding, these "facts, and although the Council had for a considerable "time abandoned the idea of selling the Endowment, yet "aferwards, during the time when there was no College "Council in existence, in the interval prior to the for-"mation of the present Council, sales of the University "lands were effected upon a very extensive scale, and "the very first act which the present Council was called "upon to perform was the sanctioning the alienation of "Government Debentures bearing six per cent. per annum, "interest," The Committee cannot conjecture to what Report of the Finance Committee the Memorialist refers —the only Report was presented in the year 1843. The Memorialist himself and Professor Croft were appointed a Finance Committee in October of that year, "to ex-"amine into the state of the resources of the University, "and especially the state of the arrears of monies due to "the University," but no action was taken by that Committee, nor was any Report or suggestion ever offered by them to the Council.

If the Memorialist intended to refer to the Report of the Finance Committee presented in March, 1842, he has been most unfortunate in his reference, as the principles on which that Report is based (as is evident from what has been before stated) are most adverse to his views. The Committee believe that the two Resolutions passed in February and March, 1843, were not founded on any Report—there is certainly no evidence whatever that they were; nor is there any thing to lead to the inference that it was the intention of the Council, when passing these, to abandon the sale of the Endowment.

In August, 1839, a Committee recommended the mode of leasing the College lands to the consideration of the Council. The Committee were of opinion, "that the "rent should be in some degree proportioned to the value "of the land," Since that time the increase of the rents has been repeatedly the subject of conservation at the Council table, and at length, in 1843, was reduced to the form of Resolutions as the Memorialist states, but certainly neither then nor at any other time (except at the period already mentioned, April, 1844,) has the Council come to any resolution to stop the alienation of the Estate by sale at a fixed limit. Whilst the consideration of these Resolutions, in 1843, engaged the attention of the Council, the lands were being sold; when they had been passed the lands continued to be sold; nor was there any member of the Council which immediately preceded the newly formed body (comprehending the Professors) that had ever expressed a doubt of the expediency of, or rather necessity for, selling the lands to enable the University to go into immediate and effectual operation.

But the Memorialist states that "the Council had for a "considerable time abandoned the idea of selling the En-"dowment." If the Memorialist had offered any proofs of this assertion, it might be necessary to inquire into their validity. As he has not, it only remains for the Committee to state in reply, that the assertion is wholly without foundation The Memorialist also states that "du-"ring the time when there was no College Council, sales of "the University lands were effected upon a very exten-"sive scale." The Committee have no doubt that the sale of the University lands was continued during that time, but it certainly was not resumed then after it had been previously stopped. The general Returns for 1843 will prove that the sales were conducted with at least as much caution as usual; for the amount sold was less than what had been sold during some other years, and the average price per acre is, for the King's College Estate, higher than that for any other year but one; and for the Upper Canada College Estate, the highest of all. On minute enquiry into the sales effected during the time, "when there was no College Council," *scil.* from the beginning of April to the close of September, a period of about six months, they find that the amount of acres sold in that half year is only about two-thirds of that sold in the other, when there was a College Council holding regular meetings; whilst the average price per acre of King's College lands, sold in that period, exceeds not merely that of the other six months, but that of any year since the foundation.

But the Memorialist continues with reference to the management during this period, "the very first act which "the present Council was called upon to perform, was "the sanctioning the alienation of £6,000 of Govern-"ment Debentures." The Committee both are and were at a loss to know the ground of the objections of the Memorialist to the application of that amount of funds. He knows as well as they that during 1843, the building on the University grounds was in progress, and was not completed until the close of that year; that as the University opened on June 8th, heavy expenditure was necessarily incurred in preparations; that at the last meeting of the former Council, on April 8th, the Bursar was directed to pay upwards of £1,500 on account of Mr. Ridout's property,—and that the statement of the funds, as exhibited on the last Wednesday in March, shewed a debt of £3,000 to the Bank of Upper Canada. Is there any thing to excite astonishment or to justify censure in the fact that, in September of that year, the Council were called on to pay £3,500 out of their capital to meet the expenditure on buildings and outfit during the previous period of six months, when that outlay was necessarily made? During that period, independently of a number of smaller accounts paid for fittings, &c., there were disbursed on account of Mr. Ridout's property more than £1,500,—to Mr. Richey the builder, £1,950,—on account of the general Library, upwards of £650,—and to Mr. Paget, on account of Medical Library and Instruments, about £950. Is it, the Committee would ask any one who took the trouble of investigating the subject with the object of aiming at the truth,—is it extraordinary that the debt, which at the end of March was £3,000, should have been increased at the end of September to £6,500, when during that time payments were to be made on account of buildings, investment in land, and preparations for commencing the business of the University? Is there any thing which deserves censure in the

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fact, that the expenditure on the buildings in the temporary occupation of the University, and the requisite outfit for commencing business therein (including Medical and general Library and Surgical instruments) should have required an outlay of invested capital of about £500? for those objects have required no more, as will be apparent on deducting from £6,500 taken from debentures in September, £3,000 on account of the former debt in March,—£1,590 on account of investment in land as directed by the Council,—and £1,500 advanced on account of the S.E. Wing.

The Memorialist appears from his subsequent observation to derive satisfaction from the remembrance that his vote is recorded as dissentient on that occasion. As the Committee have fully stated the circumstances under which the Council were called on to perform that act, they feel it to be unnecessary to offer any opinion on the Memorialist's conduct then. They will merely observe, as he has called attention to the subject of his sole dissents from the majority of his colleagues, that his recorded dissents during the twenty months in which he has been a member of the Council, have been more numerous than those of all the members of that body during the preceding period of the existence of the Institution, about sixteen years.

The Memorialist further submits that "even if it were "taken for granted that the College Council has the power "of alienating the Endowment of the Corporation, this "can only be effected by the means pointed out in the "Charter for the management of the College property, "that is to say, in obedience to By-laws regularly propo-"sed and passed in that behalf." The Committee do not clearly understand what the Memorialist suggests—whether that there should be a general Statute, declaratory of the powers of the Council, (in the expediency of which the Committee concur,)—a Statute limiting the amount to be alienated, (which also is conformable to the wishes of the Committee,)—or a Statute warranting each sale of land, which appears to them at once unnecessary and injurious. Neither can the Committee perceive any reason for the Memorialist's belief that "had the provisions of the Char-"ter (if they can be held to authorize alienation) been ad-"hered to in times past, the Endowment would now have "been in a more flourishing condition." By adherence to the provisions of the Charter, it is presumed that the proposal and passing of By-laws relative to the alienation of the Estate is intended. But it does not appear that the action of the Council under such By-laws would, in any respect, have differed from what it has been without them.

On the assertion of the Memorialist that Legislative enactment is the only means whereby purchasers may be confirmed in their rights (on the supposition that the Council had not the power to alienate the lands by sale) the Committee desire to offer no opinion, until it shall have been decided that the Council had not that power. It will then be incumbent on the Council to consider what is the proper course to pursue, in order to confirm the purchasers of the lands of the Corporation in their legal rights. At present the only object for which it seems expedient to invite the action of the Legislature is to repeal the Act of 1837, the provisions of which are not only seriously injurious to the University, but seem to have produced general dissatisfaction throughout the Province, among both the friends and enemies of the original Charter.

The Memorialist states that the accuracy of his presumption, that "the lands which possess the greatest "intrinsic value are sold first, is manifest on a compa-"rison of the average prices received for lands in the "years 1843 and 1844, respectively, when a decrease in "the value of land to the amount, of 2s. per acre, appears "in the latter year as compared with the former." On examining the Reports of the sales during seventeen years, the Committee find that this inference is not warranted, for the average of the sales during each of the first thirteen years is less than the average of the last four. The lowest average of this latter period is 30s. 4¾d. The lowest of the former 16s. (when a large amount of sales was effected in Wilmot, where the price fixed by Government was 12s. 6d. per acre,) whilst the highest average of these two periods are respectively 32s. 10½d. in 1842, and 26s. 5½d. in 1839. It may be true that the lands first sold were of greatest intrinsic value; but the proof offered by the Memorialist is certainly insufficient.

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The Memorialist further states, it is believed, as evidence of the evils resulting from the system of selling, as hitherto practised, by the Council, that "although for "nearly twelve months, as the Journals will shew, he "has sought information in vain as to the number of "leased lots originally granted; to these lots are to be "added the lots which the College Council, in pursuance "of the same leasing system, granted upon lease, so that "by the Returns furnished by the Bursar in 1843, they "are left in possession of only 54,780 acres out of "290,000, and the sales have been effected out of these "leased lots at a price in many instances scarcely ex-"ceeding that which the College placed upon its wild "lands."

As the Committee cannot trace any connected argument in this passage, they will merely observe that they have no reason to believe that the delay in submitting the information asked for by the Memorialist, has arisen from any other causes than the difficulty of collecting accurate details, and the constant pressure of business in the Bursar's Office requiring his immediate attention. They are wholly unable to perceive the connexion which exists between that delay and the addition to the lots originally leased by the College Council; although it is true that the Memorialist has sought that information in vain for nearly twelve months, yet it does not appear in any way to follow from this, that to these leased lots (regarding which information has been sought) are to be added, &c. As the statement that "by the Returns fur-"nished by the Bursar in 1843, the Corporation are left "in possession of only 54,780 acres out of 290,000 acres," might possibly be misunderstood, it seems expedient to observe that even at the beginning of the present year the portion of the Endowment on lease and unoccupied was more than half the whole amount granted.

The Memorialist is most probably correct in saying that "the sales have been effected out of the leased lots "at a price in many instances scarcely exceeding that "which the College placed on its wild lands." But it must be remembered that the minimum price, as fixed by the Council, was placed without reference to the existing value of the wild lands belonging to the Corporation, and that its object was to secure the possession of the portions of the Endowment at present considered of but little value, until they reached the arbitrary standard,—consequently it might in some cases happen that the nominal value of the wild lands might exceed the real value of the leased lots.

With reference to the opinion of the Memorialist, that "there is no necessity to alienate any portion of the "Endowment for the purpose of erecting the University "buildings," it appears unnecessary to offer any other observations than that this whole subject was most fully discussed by the Council in 1842, and that there is on the minutes a most elaborate Report by Captain Macaulay, on the state of the finances, which was made the basis of action in bringing the establishment into operation; and that the proposition of His Excellency Sir Charles Bagot, to pay the expenses of the buildings out of the arrears of interest and rent was fully considered previously to any proceeding being taken as to erecting the wing at present completed.

The Committee will now proceed to the consideration of the second principal topic of the Memorial, *scil.* "the "use which it is asserted has been made of the capital pro-"ceeds to meet the current expenses."

The chief if not the only argument, advanced by the Memorialist on this subject, is derived from a comparison of the state of the Endowment in 1843 and 1845, as exhibited by him in Appendix B. On the supposition that the details as therein given by the Memorialist are correct, it is

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easy to shew that his inference is not warranted. The result at which he arrives is that "the total decrease of "capital since 1843 is £9205 7s 9d½." But he forgets that during that period considerable sums had been spent on objects to which capital is legitimately applicable. On comparing the assets, as given by the Bursar in 1842, with a similar return for 1845, it appears that there is a great increase in the latter year produced by the completion of the building and by the provision of outfit. In 1842 there had been spent on buildings and outfit, £8731 10s. 5d; of this £6000 were for the building. The balance of the rest of it, more than £4000, was paid in 1843. The outfit in 1845 is stated at £7000, from which it appears that more than £4000 were spent on this during 1843 and 1844. To this also must be added £1000 paid in the latter year on account of materials for the west wing. It appears then that the alleged decrease of capital can be satisfactorily shewn not to have been caused by expenditure on current charges, but on legitimate objects.

But the statement as given by the Memorialist in that tabular view is in some respects inaccurate; in the first place, the year 1843 is throughout substituted for 1844 or else 1845 for 1844. The two returns of the Bursar, to which reference is made, extend respectively to December 31st, 1843 and 1844, and therefore give the state of the Endowment at the beginning of 1844 and 1845. Again, the amount of purchase money outstanding in 1845 should be £68,389, not £67,491. For this inaccuracy, however, it is probable that the Memorialist is not responsible, as the latter sum was erroneously given by the Bursar himself when the returns were first submitted to the Council. The same excuse cannot, however, be made for the statement of the Upper Canada College arrears. In this item it is stated by the Memorialist that the capital has been diminished by £2402, the difference between £6402, the amount of those arrears as given by him in the column for the Endowment in 1843, and £4000 the amount given in the column for the Endowment in 1845. That the Memorialist is inaccurate in both these accounts, a reference to the Bursar's returns, from which he professes to derive his information, will shew that he has not correctly represented that Officer's statements relative to this item. In the returns furnished to the Land Committee, the following is the Bursar's statement:

Arrears of Upper Canada College.—At the end of 1842, these amounted to £6402 0s. 4d. They have been diminished since; probably as much more will be collected as will produce, per annum, £100.

The Memorialist had therefore no authority from the returns for stating that the arrears of Upper Canada College were, at the period to which he refers, £6402.

In the returns furnished to the Chancellor and House of Assembly in 1845, these arrears are stated to be £5805 7s. 3d., both by the Collector of the College and the Bursar. The latter indeed, in the estimate of the assets, has made the following entry: "College dues in "arrear £5805 7s. 3d.—say £4000." But it is evident that the assertion of the Memorialist, that under this head there has been in one year a dimunition of capital to the amount of £2402 is wholly unauthorized by the returns from which he appear to derive his information.

In some of the observations also offered by the Memorialist on different items, the Committee regret to perceive evidence of want of due consideration.

The Memorialist observes in reference to the *Rent Roll*, that "it remains the same in both years, although "from the returns it appears that the leased lands are di-"minished to the extent of 6710 acres," as if he thought that these two facts were incompatible. If he had recollected that in the rents there is a septennial augmentation, and that every year rents are entering on their second or third periods, he would have been at no loss to understand how it might be that although the number of leased lots was diminished yet the rental remained unchanged.

The Committee cannot understand why the Memorialist should have used the term *Rent Roll* as applicable to this head. It certainly is not used in the Bursar's returns, nor is it the proper term for the item as given in these returns. The Bursar does not give an estimated Rent Roll, but estimates the receipts for rents: the Rent Roll probably much exceeds the estimate, but it is not likely that the receipts will.

The observation of the Memorialist on the outstanding purchase money "no credit has been apparently given "for the proceeds of lands sold in 1844," contains an unwarantable insinuation against the Bursar, whose integrity and accuracy the Committee have no reason to doubt. If the Memorialist had made proper inquiry regarding the subject, previously to hinting his suspicions, he would have found that the amount of purchase money received in that year was about the same as the amount of the proceeds of land sold, and therefore the amount of purchase money outstanding must remain about the same in 1843 and 1844.

But, however, although the Memorialist has failed to prove that the capital has been applied to the payment of current expenses, it is highly important to inquire whether it is the fact that there has been such an application of the capital. It is plain, that strictly speaking, the sums received by transmuting the Endowment into money should be regarded as capital; whilst the rents and interest on instalments due form the annual income. This capital is to be employed in two ways,—either in purchasing profitable investments, or in buying the stock necessary for conducting the business of the establishment, *i. e.* grounds, buildings and outfit. It is also evident that the annual income consisting of rents and interest on instalments due, may be legitimately expended on current expenses. The Committee subjoin some tabular views, from which, they conceive, it will be apparent that not only has the capital not been applied to pay current expenses, but that a considerable sum has been taken from the annual income, and applied to purposes to which capital is legitimately applicable; for the capital at present in existence in money, securities and stock, is much greater than the amount of capital actually received for the sale of lands during the existence of the Institution.

But it may be said, although the capital has not been encroached upon in any improper way during the past seventeen years, yet the present annual income is inadequate to bear the present charges on it. The Bursar's estimate of income contains ten sources:

1.—The interest on investments in Debentures and Bank Stock.
2.—The interest and rents from investments in Mortgages and productive Estates.
3.—The rents for lands under Lease.
4.—The accruing interest on the purchase money outstanding of Lands sold.
5.—The interest on arrears due for interest on Purchase Money.
6.—The same on arrears due for Rents.
7.—The dues for Students in the University.
8.—The dues for Scholars in Upper Canada College.
9.—The interest on arrears due to Upper Canada College.
10.—The annual Grant made by the Legislature to Upper Canada College.

Of these the sources of income which may be regarded as certain, are Nos. 1, 2, 7, 8, and probably 10. Nos. 3, 4, 5, 6, and 9, may be regarded as uncertain.

The advantages of this classification of the sources of income will be apparent when it is remembered that whatever the annual receipts may be the annual charges must be met.

The estimate of the annual income for No. 2 is probably not too high; but there is, however, some uncertainty such as is almost necessarily incidental to the rental of leased property in this country, and indeed this uncertainty is one of the strongest arguments which can be advanced against retaining the present landed Endowment.

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With regard to Nos. 4, 5, 6, and 9, the Bursar gives the estimate of what he considers may be at present spent in anticipation of their future collection.

But the Committee do not consider it necessary to enter into the discussion of the accuracy or inaccuracy of this estimate, as it appears to them unquestionable that for some years it may be occasionally necessary to pay the annual expenses from some other source than the mere annual income collected from these sources regarded as capital.

This was the opinion of the Finance Committee in 1842, and it was on the supposition of the necessity of this that their Report was based.

The following extract from that Report will sufficiently explain the opinion of the Committee and of the Council: "In the account current, £4,000 is entered as the charge "on account of the University for the present year, and "£4,000 to procure books and instruments, to furnish the "Museum, Laboratory, and incidental expenses; £18,000 "is appropriated as a building fund, to be expended within "four years from this date; £2,145 is allowed as the an-"nual charge on account of Upper Canada College; £1,500 "for the expenses of the Bursar's Office, which includes "keeping the grounds in order and sundry incidental ex-"penses. The several sums required to be borrowed may "be taken from the incoming capital of the Institution, "the receipts of which will probably fully meet these de-"mands."

The debt proposed to be incurred will be repaid in 1865, when the annual income will amount to £14,000, together with the rents which may be receivable on 70,000 acres of land, which will yet remain unsold.

The Committee have assumed that 6,400 acres of land, which is below the average amount of annual sales, will be sold annually at an average price of £1 5s. per acre, until all the lands now under lease and improved have been disposed of, viz: about 96,000 acres.

To this Report is subjoined a paper, giving the estimated expenditure on account of the University and Upper Canada College, from 1842 to 1867, in which the interest of the sums borrowed from capital is charged.

The Report is well worthy of careful consideration, as it fully manifests the principle on which the present or even increased charges may be met without impairing the Endowment. To this also, it is right to add, that the sum borrowed during seven years from income, may be repaid to it out of incoming capital. The Committee having attentively examined the subject, have arrived at the conclusion, that there is no reason to apprehend that the capital will be encroached on by maintaining the present expenditure, if the principles recommended in the Report of the Finance Committee in 1842 be carried out. In this Report, they conceive, an improvement may be effected as to the income estimated there, if a portion of the capital instead of being invested in Debentures yielding a fixed interest, were invested in lands yielding an equal or higher interest, and which would increase in value with the improvement of the country. It seems also worthy of consideration whether the Corporation might not legitimately and advantageously apply a portion of their surplus to the purchase of wild lands at the Government prices, in localities where improvement is expected.

Before concluding this Report, the Committee feel it to be due to themselves to notice an observation of the Memorialist on "the Sub-Committee to whom is entrust-"ed the sale of College Lands." "They are," he states, "gentlemen inexperienced and wholly unacquainted with "the value of lands in the country, and consequently in no "respect qualified to fulfil satisfactorily the important duty "required of them."

Although the Sub-Committee readily admit that they have not had the same kind of experience in land transactions as the Memorialist has had, and have no desire to compare their reputation in matters of this nature with his, yet they do not believe that the interests of the Institution have suffered from their management of the affairs which the Council entrusted to their care; nor can they omit remarking that the Memorialist was himself more than once asked to act as a member of that Sub-Committee. He declined, it is true, on the ground that he did not wish to be a party to the alienation of the Estate of the University by sale, but yet (it appears to the Committee) he might, without any compromise of his opinion on this subject, have given his assistance in valuing the lands belonging to Upper Canada College, which, there is no question, were conveyed to the Corporation for the purpose of being sold.

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This course certainly would have been more becoming than first to refuse the aid of his experience and acquaintance with the subject, and then to find fault with those who at least have done their best to discharge the duty which was committed to them. The Committee cannot but feel that the Memorialist should have been amongst the last of the Members of the University to raise any question as to qualifications for or attention to important trusts. They also conceive that it would have been more judicious for him to have deferred any strictures on the course pursued by the former and present managers of the Institution in their desire to promote its success, until he had himself given some more convincing demonstration, than any which he has yet manifested, of the zeal and ability with which he prosecutes its welfare. Neither can they think that charges implying negligence and inaccuracy, come with a good grace from an individual who has himself exhibited both in the very document in which he prefers those charges, and whose characteristics as a member of the Governing Bodies, have certainly not been diligence or precision.

The Committee do not question the motives which have induced the Memorialist not merely to oppose the views of his colleagues in Council, but also to place them in an unfavorable light before the Chancellor and the public, but they will express their conviction, that such a course is most highly injurious to the Institution, and that no establishment, especially an University, can be well conducted if the Officers will not be satisfied to yield their opinion to that of the majority. But if the resistance of the minority should be able, as in the present case, to impede the operations or stop that course which the rest of the Governing Body consider to be necessary for the prosperity of the establishment, it appears to the Committee that not merely the reality but the very semblance of government is destroyed, and that anarchy and ruin must be the result.

There are some other topics incidentally noticed in the Memorial, which the Committee think open to animadversion, but as they are not immediately connected with the principal subjects, they deem it advisable to forbear noticing them at present, particularly as the number of those on which they have considered it necessary to offer remarks, has been so great; they will therefore submit the following suggestions:

1. That the sale of lands shall be resumed and continued until all the present Endowment shall have been disposed of, except such lots as may be advantageously kept under lease.

2. That the collected proceeds of such sales shall be funded in three ways: 1. Debentures; 2. Profitable estates; 3. Wild Lands in favorable localities.

3. That the collection of the arrears of interest and of rent shall be more strictly enforced; a sufficient time being fixed within which all must be paid.

4. That the Bursar shall submit with his usual quarterly returns, a balance sheet, shewing the receipts and expenditure on account of Capital and Income distinctly separated. For Capital he shall take as receipts the proceeds collected of lands sold; and, as disbursements, all payments for investment for buildings, for outfit, and such other expenditures as are usually borne by Capital. For Income he shall take as receipts all rents, interest, dues and fees collected, grants made, and miscellaneous items not before mentioned; and as disbursements, the expense of management, and the salaries and contingencies of the University and College.

If it should happen that one of these services requires aid from the funds of the other, such circumstance shall be particularly noticed, and the service so borrowing shall be debited with the loan, and charged with interest thereon.

(Signed,) JOHN McCAUL,
Chairman.

King's College,
28th May, 1845.

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No. 1.—KING'S COLLEGE.

TABULAR view of the Receipts and Expenditure on account of Capital from the year 1828, to January 1845.

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RECEIPTS.	AMOUNT. £	s.	d.	EXPENDITURE.	AMOUNT. £	s.	d.
Royal Grant for Buildings,.....	4,999	19	9	University grounds with improvements,.....	13,563	17	6
Proceeds of sales collected,.....	85,816	1	1	S. E. Wing,.....	10,290	5	2½
				Materials for S. W. Wing,..	1,000	0	0
				Drain,.....	200	0	0
				Anatomical Theatre and Fittings,.....	391	18	11
				Chapel, Hall, Library, Apparatus, Museum, and Stock in general,.....	7,186	17	2½
					32,632	18	10
				Balance,.....	58,183	2	0
£	90,816	0	10	£	90,816	0	10

It appears from the above, that the Capital received exceeds the Capital spent by £58,183 2s.

No. 2.—KING'S COLLEGE.

TABULAR view of the Receipts and Expenditure on account of Income from the year 1828 to January 1845.

RECEIPTS.	AMOUNT. £	s.	d.	DISBURSEMENTS.	AMOUNT. £	s.	d.
Interest,.....	36,045	2	0½	Management,.....	16,769	10	2
Rents,.....	19,532	4	4½	Salaries and all other current expenses,.....	12,491	16	11½
Dues and fees,.....	1,249	13	2		29,261	7	1½
				Balance,.....	27,565	12	5½
£	56,826	19	7	£	56,826	19	7

It appears from the above, that the Income received exceeds the Income spent by £27,565 12s. 5½d.
It remains then to account for the two balances.

Capital	£58,183	2	0
Income	27,565	12	5½.
	£85,748	14	5½.

No. 3.—UPPER CANADA COLLEGE.

TABULAR view of the Receipts and Expenditure from the year 1829 to January 1845.

RECEIPTS.	AMOUNT. £	s.	d.	EXPENDITURE.	AMOUNT. £	s.	d.
Parliamentary grants,.....	13,099	19	1	Buildings and Grounds,.....	18,948	2	3
Proceeds of sales of land collected,.....	10,430	3	1	Salaries and all other current expenses,.....	70,573	19	1½
do. of Town lots,.....	1,235	7	9	Debts and investments,.....	1,759	4	0
Interests,.....	2,626	4	8				
Rents,.....	394	9	11				
Dues,.....	24,825	1	10½				
	52,611	6	4½				
Balance,.....	38,669	19	0				
£	91,281	5	4½	£	91,281	5	4½

It appears from the above, that the Expenditure exceeds the Receipts by £38,669 19s. which amount was supplied from the funds of the University.

No. 4.—UPPER CANADA COLLEGE.

TABULAR view of the application of the surplus Capital and Income of the University.

	£	s.	d.
Debentures, Mortgages, Cash, &c,.....	47,078	15	5½
Buildings and Grounds, Upper Canada College,.....	18,948	2	3
Salaries and current expenses of Upper Canada College,.....	19,721	16	9
£	85,748	14	5½

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No. 3.—*Opinion of the Visitors of King's College on the subject of the two preceding Documents.*

The Visitors of King's College have been requested by His Excellency the late Governor General, as Chancellor of the University, to state whether in their opinion it is competent to the College Council to sell or alienate the lands which formed the Endowment, for any and what purposes?

2ndly. Whether anything can be done by mere vote of the Council which the Statute authorizes to be done by Statute, Rule and Ordinance?

3rdly. Whether a Statute ought to be passed for the appropriation generally of all monies to be expended, that is to say, a gross sum for the Bursar's Office, a gross sum for any other incidental expense (the Library for example,) and especially for the salaries of Professors and other Officers of the Institution?

The Visitors would gladly (if they could with propriety) forbear expressing opinions upon these questions, especially upon the first of them, because they are sensible that although it is strictly in their capacity of Visitors that they have been thus referred to, yet their opinions are likely to be regarded in general as judicial, and they feel that as the doubts which have suggested these questions may at any moment give rise to legal proceedings in the Court of Queen's Bench, affecting the rights of parties unconnected with the College, it would be much more satisfactory to such parties that the Judges should be in a situation, after hearing the arguments that might be addressed to them, to pronounce a judicial decision in any such case unbiassed by any previous declaration of their opinions.

But being in fact made Visitors by an Act of the Legislature, and their duties as such not being limited by the Charter to any special objects as is sometimes the case, nor directed to be performed in any peculiar manner, they consider that they have no right to withhold from the Institution any advantage which it may be supposed can be derived from their discharging fully the duties of Visitors in the sense which belongs to the office, in connection with such a Corporation as that of King's College: in other words, as the Bishop of Quebec must have done if he had continued to be the Visitor, according to the original Charter.

The Visitors are aware that the Court of Queen's Bench in England are by law Visitors of many Corporations; but those are Institutions of a different kind and for different purposes; and the duties of Visitation which are considered to be incumbent in the Court in such cases are of a different nature, having other objects in view and are performed only in the open and regular exercise of judicial functions upon a proper formal proceeding, at the instance of some party having a substantial interest in the question moved.

The Statute 7 William, IV. chap. 16, however has made not the Court, but the Judges of the Court, Visitors of King's College; and being the only Visitors of this Eleemosynary foundation, they suppose it to be incumbent upon them to do whatever Visitors of such a Corporation should do, to whom the duty has been committed in an unrestricted sense.

The Visitors have thought it right to state these considerations, because if there be any inconvenience or impropriety in committing a duty of this description to the Judges, it rests with the Legislature to place the matter on another footing.

The Visitors further beg leave to state that they are not aware that it is regularly a part of the duty of Visitors to answer references upon abstract questions of law affecting the Institution or its proceedings, but they consider their duties are rather to visit the College when they apprehend that there may be some abuse or irregularity requiring to be checked,—to afford redress to any member or officer of the Institution complaining of injustice,—to keep the Governing Body of the Corporation within the terms of the Charter,—and to exercise the power of supervision in regard to the Statute that the Charter has committed to them.

For the direction of the Council upon any doubtful legal question that may present itself, the more regular course would seem to be to take the opinion of Counsel and to abide by that opinion, leaving it to the Visitors to interfere in their discretion when they have reason to think that anything wrong has been done, or upon an application from some party entitled to look to them for redress.

Having offered these explanations of their sentiments upon a subject which has been little canvassed in this country, and offered them rather with a view of their being considered in connexion with any reference which it may be proposed to make to them hereafter, than by way of urging objections on this occasion which might create embarrassment, the Visitors proceed to state:

1stly. That in their opinion it is competent to the College Council to sell or alienate the lands which form the Endowment, in order to raise funds for carrying on the proper business of the Institution.

2ndly. That in their opinion there may be many things legally done by vote or resolution of the Council which the Charter *authorizes* to be done by Statute, Rule or Ordinance.

The Visitors have answered this question strictly in the terms in which it is proposed to them. It need hardly be said that if there be anything which the Charter requires to be done, by Statute, Rule or Ordinance, such matters cannot be done by mere vote of the Council.

3rdly. In the opinion of the Judges a Statute ought to be passed, authorizing any permanent or stated appropriations of money in the shape of salaries to Professors or others, and that any other payment of contingent account whether for the Library or other incidental purposes, or for the ordinary current expenses of the Institution, should be made under the authority of some Statute, Rule or Ordinance, either specifying the particular service and expenditure, or directing prospectively how such charges may be incurred and defrayed as the occasion arises, and providing for the subsequent passing of the accounts.

When the Visitors speak of this as being fit to be done, they do not go so far as to say that it is to the full extent necessary in strictness of Law, so that whatever has been done otherwise is illegal; they do not conceive that the power given to the Council of King's College to make Statutes, Rules and Ordinances *respecting the management of the revenues and property* of the College, was given in any other spirit or intended to be exercised in any other manner than the power to make Statutes for such purposes as is understood to be given, and is usually exercised in other similar Institutions; and the Visitors have, unfortunately, not had the means of observing what is the course usually practised in that respect in other Colleges governed under similar Charters.

The Visitors have no doubt that the College Council may (subject to the approval of the Visitors) make Statutes which shall extend to and control the expenditure of the revenues in every particular, and in regard to the minutest and most ordinary charge, so that no expenditure could afterwards rightly take place which should not be made in strict conformity to such Statutes.

But so long as such Statutes have not been made, the Visitors do not express the opinion that the Governing Body of King's College may not by analogy with other Corporations make many disbursements in the ordinary conduct of their affairs by their mere resolution or order, and without a formal statute.

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To prevent complaints and misunderstanding, and for the satisfactory discharge of the duties committed to them, the Council would, in the judgment of the Visitors, do well if they should carefully provide that not merely the manner in which the revenues and property shall be *managed*, but also the appropriation and use that shall be made of the revenues and property, shall as far as can be done be provided for by statute.

In speaking of King's College and of the conduct of its affairs as regards the care and disposition of its revenues and property, the Visitors have assumed, as the Provincial Legislature appears to have done, that the College Council, which includes the Chancellor and President, is the Governing Body of the Corporation, and that in fact it is the Council and not the Chancellor alone that represents the Corporation, as well for administrative purposes as in the exercise of the Legislative powers committed to it by the Charter.

This is not expressly stated in the Charter, but we have no doubt that it was so intended and has been always so understood, and that in the absence of any other provision, it results from the supreme or Legislative power being committed to the Council.

(Signed,) J. B. ROBINSON, C. J.
J. JONES, J.
A. McLEAN, J.
C. A. HAGERMAN. J.

Dissentient: J. B. MACAULAY, J.

Toronto, 17th December, 1845.

A true copy,

(Signed,) H. Boys,
Registrar, K.C.

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